# THE LIFE

OF

# THOMAS MUIR, Esq. ADVOCATE,

YOUNGER OF HUNTERSHILL, &c. &c.

"A NOBLER MAN
LIVES NOT THIS DAY WITHIN THE CITY WALLS."

Thomas Muir

# THE LIFE

OF

# THOMAS MUIR, Esq. Advocate,

YOUNGER OF HUNTERSHILL, NEAR GLASGOW;

MEMBER OF THE CONVENTION OF DELEGATES FOR REFORM IN SCOTLAND, ETC. ETC.

WHO WAS

## TRIED FOR SEDITION

BEFORE

## THE HIGH COURT OF JUSTICIARY IN SCOTLAND,

AND SENTENCED

## TO TRANSPORTATION FOR FOURTEEN YEARS.

WITH

## A FULL REPORT OF HIS TRIAL.

BY

PETER MACKENZIE.

GLASGOW: W. R. M'PHUN, TRONGATE;
SIMPKIN & MARSHALL, LONDON.
MDCCCXXXI.

KD H4114

Edward Khull, Printer, Glasgow.

TO

THE RIGHT HONOURABLE

# FRANCIS JEFFREY,

LORD ADVOCATE OF SCOTLAND.

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My Lord,

Throughout these kingdoms, and even in distant lands, your name has long been known as the eloquent Advocate of Civil and Religious Liberty.

Elevated as your Lordship now is to one of the highest judicial stations in Scotland, it affords unspeakable satisfaction to your countless friends and admirers—among whom let me be reckoned one of the most humble, but not the less enthusiastic.—It affords, I say, unspeakable satisfaction to one and all of us, to find, that you have not forgotten for a moment, those great and noble Principles, which formerly guided your conduct,—the Principles of the immortal Charles James Fox; but that you have now rather given them a loftier tone, and will ensure for them, if possible, a more commanding attention.

The circumstance, that, with the exception of your late distinguished and ever-to-be-remembered friend, the Honourable Henry Erskine, your Lordship is now the *first* Reformer who has filled the situation of Lord Advocate of Scotland, is of itself enough to fix you completely in the hearts of the People. And I am sure I do not overcharge the statement when I say, that your Lordship is at this moment one of the most esteemed and popular men in Scotland.

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It is for these reasons—and for another, to which I shall presently allude, that I now presume to Dedicate to your Lordship, in the first instance, the touching and extraordinary History of a man—not, I believe, altogether unknown to your Lordship, since he was once a distinguished Member of the Scottish Bar;—but who, it is well known, was prosecuted like one of the vilest criminals, at the instance of one of your Lordship's predecessors in office,—I mean the Right Honourable ROBERT DUNDAS, "of *blessed* memory," because he presumed to think for himself—to act like an honest man —a Christian—and a Patriot, in the worst of times!

It is unnecessary for me to refer your Lordship more particularly to the iniquitous—the disgraceful trials which took place in Scotland in the year 1793; for no man is better acquainted with the history of that frightful period than yourself. I am much mistaken if your Lordship does not share the feeling in regard to them, which was expressed by FOX, by SHERIDAN, WHITBREAD, and ADAM, "in stronger language (as it has been fitly said) than was ever uttered within the walls of Parliament."

My Lord, If it be true that good and virtuous men were persecuted and hunted to death in this country some 40 years ago, for advocating the immutable principles of RIGHT and REASON—of TRUTH and JUSTICE—the great comfort to their surviving followers and friends now is, that their predictions and principles have already been realized. "*Were I to be led this moment from the bar to the scaffold, I should feel the same calmness and serenity which I now do. My mind tells me, that I have acted agreeably to my conscience, and that I have engaged in a good, a just, and a glorious cause,—a cause which sooner or later must and will prevail, and, by a timely Reform, save this country from destruction.*"

These, my Lord, were the memorable words of THOMAS MUIR, when he was placed at the Bar of the High Court of Justiciary,—surrounded by soldiers with drawn bayonets,—on the 31st of August, 1793. And can there be a doubt, that ere the 31st of August, 1831, the Reform Bill, for which he paved the way, will have been TRIUMPHANTLY carried into Law? The

sentiments—the very words of THOMAS MUIR—have been already echoed by your Lordship, and other great men, in Parliament. But, I presume, no Ghost of any of the DUNDASSES has yet troubled you.

Be pleased, my Lord, to peruse these pages—imperfectly and hastily written. And my highest ambition will be gratified, if the concluding appeal, I have taken the liberty feebly to make, should meet with the approbation of your Lordship.

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## PEOPLE!

### OF ENGLAND, IRELAND, AND SCOTLAND,

I NOW present you with the history of one of the most amiable Reformers that ever breathed,—of one of your first—your best—your bravest friends,—who suffered more on your account than tongue can tell.

Would that he was now among us to participate in our feelings, and to enjoy the reward of his great exertions!—But we entertain "the well-grounded hope," that he is now in a better world, where Tyranny and Corruption cannot exist.

Let us thank GOD, that we live under the mild and paternal sway of one of the BEST and most PATRIOTIC PRINCES that ever graced the THRONE of these REALMS.

Let us reflect,—and be for ever grateful,—that our GRACIOUS KING—whom God long preserve—has turned his back on our ENEMIES; and that he has called to his Councils, the long-tried, firm, and faithful FRIENDS of FREEDOM! For when we turn our eyes to ENGLAND! and behold, that next to our KING, we have a GREY, a BROUGHAM, a DENMAN, and a RUSSEL;—When we turn them to IRELAND! and behold that we have an ANGLESEY, a PLUNKETT, and a STANLEY;—To SCOTLAND! and behold that we have a JEFFREY, a COCKBURN, and a MURRAY;—may we not feel perfectly assured, that in such hands our RIGHTS and LIBERTIES are safe and sacred?

Reformers!—Let us now only be true to ourselves. We have otherwise nothing upon earth to fear.—For who shall dare to touch one hair of our heads? Therefore, with hearts full of loyalty, let us, I say, REJOICE!

I have the honour to be,

MY LORD,

And FELLOW REFORMERS,

Your ever faithful and devoted humble Servant,

P. MACKENZIE.

28, PORTLAND STREET, LAURIESTON,
*Glasgow, April* 11, 1831.

# LIFE OF THOMAS MUIR, Esq.

YOUNGER OF HUNTERSHILL.

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Mr. Thomas Muir was born in Glasgow, on the 24th of August, 1765. His parents were highly respectable. Being their only son, every care and attention, was naturally paid to him. He was instructed in the elementary branches of his education, by the late Mr. Daniel M'Arthur, one of the masters of the Grammar School of Glasgow, under whose able tuition, he had made such proficiency, that on the 10th of October, 1775, when he was yet little more than ten years of age, he was sent as a student to the University. For five Sessions he attended regularly all the junior classes; but at this time, it does not appear, that he gave token, of that dauntless spirit of independence, and noble love of liberty, which afterwards distinguished his short, but melancholy career. His early habits, were rather of a reserved and modest nature—and as he paid great respect, to the pious and exemplary conduct of his parents, it is believed that his attention was at one time turned to the Church, with which view he studied Divinity, for a couple of years. His amiable and kind-hearted disposition, certainly harmonized with that profession; and for his own sake, as well as for the peace and happiness of his more immediate relatives—it is perhaps to be regretted that he did not follow it. He finally resolved to go to the Bar, and the comfortable circumstances of his father easily enabled him, to carry that resolution into effect. He purchased many rare and valuable books—made himself master of several foreign languages—and in short sedulously devoted himself, not merely to the science of the law, but to the acquisition of every kind of useful knowledge.

He latterly studied a course of Civil Law, for two years, under the immediate direction of the late Professor John Millar, of Glasgow, who was probably one of the best Jurists that this country ever produced. His works are now known throughout Europe, and every lover of liberty reveres his memory. Mr. Muir was particularly attached to this good and eminent man, and it was while under his tuition that an event occurred which created much noise at the time in

Glasgow, which roused the feelings of the Students, and led them to adopt a line of action not more honourable to themselves, than it has proved instructive and beneficial to their successors.

During the session 1783–84, one of the learned Professors,* in consequence of some dispute with his colleagues, was suspended by them from his office as a member of the *Jurisdictio Ordinaria*. Whether this proceeding was right, or wrong, it excited the indignation of a number of the Students, who were attached to the Professor, by his abilities, engaging manners, and venerable age. They therefore determined, if possible, to procure him redress. At that time the celebrated Edmund Burke, was Lord Rector of the University. This high office, is in the gift of the Students. It is conferred by their free suffrages, on such individual as they think fit, and though the election takes place annually, the Lord Rector for the time is generally continued in office, for *two* years successively. Mr. Burke was applied to, by the Students, to exert his influence in behalf of their favourite Professor—but he either treated the application with indifference, or refused to interfere. This conduct naturally provoked the Students, and they resolved to strip Mr. Burke of the office of Lord Rector at the next election—and to confer it on the late Robert Graham, Esq. of Gartmore, a genuine Whig, and one of the first commoners in Scotland. The majority of Professors were greatly offended at this threatened proceeding towards Mr. Burke. They did every thing they could to prevent it; and in consequence of the powerful influence which they then exerted, by threats, intimidation, and otherwise, they were able for a short time to frustrate the intentions of the Students. Mr. Burke was re-elected in 1784.

It is in vain to repress the warm feelings of youth—and accordingly this conduct of the Professors, just determined the Students, to persist more clamorously, for the attainment of their object. They now took higher ground, and threatened a petition to His Majesty, to appoint Commissioners to inquire into, and redress, the above, and other grievances of which they complained. The majority of Professors, by this time, had attempted to take the election of Rector into their own hands, and to deprive the students of this their only popular privilege. But the attempt was manfully and suc-

* The late John Anderson, Professor of Natural Philosophy, and the distinguished founder of the Andersonian Institution, to whom the citizens of Glasgow, and the friends of science throughout the world, are so much indebted.

cessfully resisted. Mr. Graham was triumphantly elected Lord Rector in the session of 1785.* And it is worthy of remark, that from that day to the present, the Students of the University of Glasgow,—to their honour be it spoken,—have been peculiarly tenacious of their privileges, and with only one or two exceptions, have never since failed to choose as their Lord Rectors, men, the most distinguished in the land, as advocates for popular rights, and for civil and religious liberty. We need only mention, in this short but splendid array, the living names of Francis Jeffrey—Sir James Macintosh—Henry Brougham—Thomas Campbell—and the Marquis of Lansdowne.

Mr. Muir participated warmly in the feelings of his fellow Students on the above occasions. He now threw off his wonted habits of reserve, and became one of their most enthusiastic and admired leaders. With others, his companions, it was alleged, that he had written some smart offensive squibs against certain of the Professors—a practice which is frequently resorted to, in the heat of political debate, and is sometimes amusing and harmless enough. But this was a sin that could not be tolerated, in the present instance, and accordingly, early in the next session, a circular letter was despatched from the Faculty Hall, to all the Professors, enjoining them not to admit within their classes Mr. Thomas Muir and twelve other young gentlemen named in it. This step, whether it was harsh or proper, justifiable or unjustifiable, created a good deal of sensation within and without the walls of the College. Mr. Muir was earnestly urged to make an humble, and humiliating apology, to the offended Professors, as the means of restoring him to favour; but he pointedly refused to do any thing of the kind, and turned his heel on the University of Glasgow with feelings of indignation and disgust. He remained, however, on terms of personal intimacy and friendship with Professors Anderson and Millar to the last.

He now went to Edinburgh, where he studied for two years longer, the different branches of Law, &c. in that Uni-

* We find Mr. Graham founded, in perpetuity, a prize, being a gold medal, of the value of at least five pounds, to be presented annually to the Student who should write *the best Discourse on Political Liberty;* the medal to contain this motto, beneath a figure of Liberty presenting a wreath of laurel, "*Libertate extincta nulla virtus.*" We mention this in order that the Students, now, may take the hint, and see whether the Professors have religiously adhered to the *special* intention of the donor, by awarding this Gold Medal to the author of the best discourse on Political Liberty.

versity; and in the year 1787 he was admitted a Member of the Faculty of Advocates.

Deeply versed in the erudition necessary for a lawyer, and enriched with a store of general knowledge, he set out as an advocate, without any thing to hope for from the favour of the great, or from an extended circle of influential friends. His talents were soon admired, and he obtained considerable practice and reputation at the bar, much earlier than is generally the case, or than he himself could have anticipated. He was a fluent, and eloquent speaker, and always evinced uncommon zeal and anxiety, for the interests of his clients—qualities which were of course greatly in his favour. But amidst the fatiguing routine of business, and the seductive amusements of a great city, he did not abandon those early habits of piety and devotion, which he imbibed under his father's roof, nor was he ever lukewarm in the cause of religion.* As an Elder of the parish church of Cadder he frequently, as in other places, extended his charity most liberally to the poor. He has often been known to plead the cause of the injured and oppressed, sometimes successfully, before the Courts, without fee or reward. And frequently, in the General Assembly of the Church of Scotland, has he exerted his talents, in behalf of its venerable tenets.

This amiable man,—for such surely we may call him,—had now been about five years at the Bar, and was advancing rapidly, to the head of his profession, when the malignity of party spirit broke out against him, and speedily accomplished his destruction.

It is well known that the French Revolution of 1793, created a prodigious sensation in this country, the effects of which are not yet eradicated, if they ever will. Violent political parties arose, who approved, and condemned it. A mind cultivated, and sanguine, like Mr. Muir's, could not behold with indifference, the dawning and progress, of that great event. The blow aimed at priestcraft—the abolition of hereditary offices and honours—the recognition by a great people, of the first principles of freedom, and just government—the obstacles which opposed it—and the numerous advantages which it promised to the world, and to posterity, all conspired to interest in its behalf the intelligent of all nations, and to attract their attention to the causes which produced it.

About this time, or rather *before* the French Revolution

* *Vide* Correspondence between him and the Rev. Mr. Dunn, inserted in the Appendix.

actually broke out, an Association had been formed in London under the name of the "Friends of the People," for the purpose of procuring a Reform in Parliament. To preserve, or rather to restore, the purity, of the British Constitution;—to keep within proper bounds, the already overgrown influence of the Crown;—to secure the independence of the House of Commons;—to render its members, what they have always pretended to be,—the "representatives of the people;"—to consolidate their interest with that of the nation;—to check corruption and prodigality;—and to avert the horrors of a Revolution among ourselves,—were the important objects, which this Association held up to view. They published an Address, which, without containing any specific plan of Reform, was calculated in the first instance, to rouse the attention of the Nation to the subject. This Address came forth under powerful auspices, for its immediate promoters were men, of the first character in the realm, either as senators or philosophers. And there can be no doubt that a majority of the people, instantly, and cordially, responded to it.

Meanwhile the French Revolution was making rapid strides—and a strong desire began to be manifested by the people of this country, for political information, on that, and other subjects, more nearly concerning themselves. This information, when obtained, only enabled them to see more clearly the nature of their own rights, while it laid open the errors and defects, which had unfortunately crept into our own government, and consequently augmented the desire for Reform.

At this ticklish period, Mr. Muir stepped forward, to aid, and assist, the cause of the people. On the 16th October, 1792, a public meeting was held within the Star Inn, Glasgow, at which his friend, the late Colonel Dalrymple of Fordel, presided. Mr. Muir, and many of the respectable inhabitants of Glasgow, attended that meeting, and formed themselves into an Association, under the title "*Friends of the Constitution, and of the People,*" the object of which was, to co-operate with the Friends of the People in London in procuring a Reform of the House of Commons. Citizens of every description, were invited to attend the meeting, and behold the purity of its proceedings. Before any person could be admitted as a member of the Association, it was incumbent on him to subscribe a declaration, expressing his adherence to the government of Great Britain, as established by King, Lords, and Commons; and it was strongly recommended to the office-bearers of the Association to pay par-

ticular attention to the moral character of those who applied for admission. We find, that at this early period, the Glasgow Association, transmitted a vote of thanks to the present Premier, then the Honourable Charles Grey, for his exertions in the cause of Reform. His answer to it was that "*to deserve well of my country has always been the height of my ambition.*"

On the above principles, and having the single object of Reform in view, numerous Associations, or Societies, were formed at that time in towns, and parishes, throughout Scotland, composed principally of persons belonging to the middle ranks of life, who have always been regarded, as the most intelligent, independent, and valuable part of the nation.

Mr. Muir enjoyed great presence of mind, which never forsook him on any occasion, and that good quality, coupled with his ready tact, and fluency of language, eminently fitted him to shine, in public discussions. Accordingly, in these Societies, as elsewhere, his honourable profession, and enviable talents, soon made him the object of general attention. He became a popular member of the Society in Glasgow, Kirkintilloch, and other places in Scotland, to which he was invited; and when he attended these Societies, or any other Society, having for its object the cause of Reform, he always spoke in its behalf with energy, propriety, and effect. He conjured the people, to adhere steadily, to the great principles of the Constitution. He put them on their guard, against the villanous seduction of hired spies, who then unhappily had begun to brood in the land;—and, above all, he pointed out to them, the dangerous consequences, of the least tumult or insurrection, among themselves, which would be fatal to the object of their Association, and highly criminal.

The Right Honourable *William Pitt* was Prime Minister of this country in those days. Our attention must now for a moment, be directed to him— and certainly nothing can be more instructive, and withal more humiliating, than to mark the flagrant political apostasy, of great public men.

In the year 1782, (before he was captivated with the charms of office) it is notorious that Mr. Pitt (in conjunction with the then Duke of Richmond) was a bold, and determined advocate, in favour of Reform. *He went the utmost lengths to which that measure has ever been proposed to be carried by its most violent partizans.* He was, in truth, an advocate for Annual Parliaments, and Universal Suffrage. He declared "that the restoration of the House of Commons to freedom and independency, by interposition of the great

collective body of the nation, is essentially necessary to our existence as a free people." He declared that "an equal representation of the people, in the great council of the nation, annual elections, and the universal right of suffrage, appear so reasonable to the natural feelings of mankind, that no sophistry can elude the force of the arguments which are urged in their favour; and they are rights of so transcendent a nature, that in opposition to the claim of the people to their enjoyment, the longest period of prescription is pleaded in vain. They were substantially enjoyed in the times of the immortal Alfred—they were cherished by the wisest Princes of the Norman line—they formed the grand palladium of our nation—they ought not to be esteemed the grant of royal favour—nor were they at first extorted by violence, from the hand of power. They are the birthright of Englishmen—their best inheritance, which, without the complicated crimes of treason to their country, and injustice to their posterity, they cannot alienate or resign. *They form that triple cord of strength, which alone, can be relied on, to hold, in times of tempest, the vessel of the state.*"

Such is a small specimen of the language of a man, who has often been called, by his warmest friends and admirers, "the *Pilot* of the *State.*" If the language had even been somewhat more moderate, or subdued, the country would have been grateful for it. But Mr. Pitt became Prime Minister in 1784, and gave his former professions the lie! Ah! it would have been well for the country, if he had stopped here, and done nothing more. We are afraid we shall be obliged to notice him again in no very flattering terms.

The history of the British Constitution shows, that an ever watchful jealousy, on the part of the people, is its animating principle, to which it is mainly indebted for its excellence and permanency. If this jealousy, sometimes wrong, but oftener right, and always offensive to men in power, were once tamed and suppressed—if, instead of the people judging about the government, the government should presume to judge, and control, the opinions of the people, the *forms* of the Constitution might remain, but its spirit and character would be for ever gone. In such a crisis an honest and impartial jury becomes our only safeguard.

These Reform Associations of 1793, by reason of their prosperity, and accumulated moral strength, became highly offensive to the Administration of Mr. Pitt. And, with a view to divert the attention of the public from them for a

little, it was whispered by some of the ministerial journals of the day, that the Ministry itself, in Parliament, would bring forward a plan of Reform calculated to meet the wishes of the nation. This flattering prospect was hailed with transport by many, who augured from it the preservation of peace —the diminution of public burdens—the improvement of commerce—and, in short, a long succession of happy days. But the real and intelligent friends of Reform, after what they had witnessed, could place no reliance on the professions of the Pitt Administration,* or its hirelings, on this subject. These friends, therefore, did not relax their labours for a moment in the good cause. Mr. Muir was still the most active among them.

Various public meetings, or "Convention of Delegates" (as they were called), from all the different Reform Societies in Scotland, were held in Edinburgh during the years 1792, and 1793, at which Mr. Muir, and his friend, the Earl of Selkirk (then Lord Daer), frequently presided. At one of these meetings, (21st December, 1792,) Mr. Muir read the celebrated Address from the Society of United Irishmen in Dublin to the Reformers in Scotland, which we believe was transmitted to him by his friend Mr. Archibald Hamilton Rowan, who we understand still survives, and is one of the most distinguished men and venerable patriots in Ireland. This Address is couched in warm and glowing language. What, for instance, can be more beautiful, or more gratifying to the feelings of a Scotchman than the following lines, being its first paragraph?

"We take the liberty of addressing you in the spirit of civic union, in the fellowship of a just and a common cause. We greatly rejoice that the spirit of freedom moves over the face of Scotland—that light seems to break from the chaos of her internal government; and that a country so respectable in her attainments in science, in arts, and in arms; for men of literary eminence; for the intelligence and morality of her people, now acts from a conviction of the union between virtue, letters, and liberty; and now rises to distinction, not by a calm, contented, secret wish for a Reform in Parliament, but by openly, actively, and urgently willing it, with the unity and energy of an imbodied nation. We rejoice that you do not consider yourselves as merged, and melted down, into another country, but that, in this great national ques-

* How nobly have the present Ministry—unlike that of Pitt—redeemed its promise to the country!

tion, you are still Scotland—the land where Buchanan wrote, and Fletcher spoke, and Wallace fought!"

Yet this address,—the whole tenour of which—is highly complimentary to the Scottish nation, and breathes a spirit of patriotism and peace, rarely equalled, was actually denounced in the year 1793, as a species of wicked and abominable SEDITION! Is it—can it be a sin, for us, the youthful Reformers of the present day, to step forward and attempt to rescue the character of our generous neighbours, as well as our own forefathers, from such an imputation? In the year 1881, who shall say, that this is sedition?

The ministry of Pitt had now boldly set face against all and every kind of Reform. The patrician policy, of ancient Rome, seems to have been resorted to, and it has been alleged, and there is strong reason to believe, that a war with France was actually courted just to engross the public attention—to sink these societies for Reform altogether—and to arm that Ministry with a vast accession of influence and military power. This, by the bye, looks something like the game, which that poor silly old tyrant Charles the 10th and his Polignac Ministry, thought they could play to advantage last year in France, when they sent their armament to Algiers. At any rate, there cannot be the smallest doubt, that under the auspices of the Pitt Ministry, the principles of the old French Revolution were industriously and shamefully misrepresented, in order to fix odium on the friends of Reform in this country, who, it was said, intended to imitate the "bloody example" of the French. These friends of Reform were called a set of traitors—pillagers—and cut-throats. Not a word in the vocabulary was black enough for them. They did not receive credit for one single good intention, no not one. The very word "*Equality*" which had been adopted by the French, to signify an equality of political rights, and privileges, was gravely explained by our clergy to mean, an equality of *property*. Hence the Reformers were called "*levellers*." Sermons were preached, up and down the country, in favour of passive obedience to rulers, *alias* the Divine right of Kings: and because the Reformers could not swallow that doctrine, they were called "*Demagogues*." The revolutionary excesses in France, which every honest Reformer sincerely lamented, were quaintly ascribed to the evil genius of "a democratical system of government." And it cannot be forgotten that Edmund Burke (not saying any thing of the thousands of small fry who swarmed about the Treasury) received a goodly pension of some thousands a-year for traducing the French Revo-

lution—for calling his own countrymen (the Reformers) "a Swinish multitude," and other bad names, which were continued to be heaped upon them, down till the days of Sidmouth, Castlereagh, & Co. Better manners fortunately, have now got among us—yet by the above, and a thousand other artifices, the Ministry of Pitt, contrived to gull the country, and blazoned forth, that the friends of Reform, were the deadly enemies of the Constitution.

The alarm thus sounded, and too generally believed, was dexterously improved by the Ministry. They played so well on the fears, and feelings, of the Nation, that they thought they might safely try their hand, and make a few STATE experiments, on the persons, and feelings, of the Reformers. They accordingly singled out some of the most active of these Reformers against whom the artillery of the law was ordered to be directed with all its fury. Down came the Right Honourable Henry Dundas, Lord Advocate, from London. He set the machinery of the High Court of Justiciary in order;—and a better Advocate for a State prosecution, could not be found. Not a single Reformer, that came through his hands, had the least chance of escape—one and all of them were found guilty —Of what? The reader will see by and bye.

Mr. Muir was one of the first Reformers laid hold of in Scotland. On the 2d day of January, 1793, he was apprehended and carried for examination, before the Sheriff of Edinburgh, on a charge of Sedition. Acting in conformity to the course which he had uniformly at the Bar, recommended to others to observe, he declined to give any answer to the special questions which were put to him, because he considered that such examinations, were incompatible with the rights of the subject. *Accusare nemo se debet nisi coram Deo.* He was liberated, at this preliminary stage of the business, on finding sufficient bail for his appearance on some future occasion.

The situation of Mr. Muir now became extremely unpleasant. Not only was the cause he had espoused scandalously traduced, but the friends of it, were wantonly persecuted. And God knows, it must have been appalling enough, even to a stout heart, to fall under the lash of the Lord Advocate of Scotland in those days, in a political prosecution, projected by the Ministry, and for the success of which they panted. Yet Mr. Muir never flinched from, or belied, his political principles one moment. Indeed, he has been often heard to declare, that he would rather go to the scaffold than make the least surrender of them. Truly it may be said of him that he was—

A firm,—unshaken,—uncorrupted soul
Amid a sliding age.

One circumstance annoyed him greatly. He thought he had secured many professional friends at the Bar, as well as in other places, who would have stuck to him to the last. They now, either knit their brows at him, or shunned his society altogether,—while others, in a more elevated station, did not hesitate to treat him, with rude insolence. In doing this they only imitated the example set them at head-quarters.*

Mr. Muir now resolved to leave this country for a short time, and visit France. Some of his friends have regretted that he took that step, because it gave his enemies an additional reason to traduce and malign him. In fact, any man in this country, who held the least communication with France, at that period, was reckoned a traitor; and accordingly, it was stated, that Mr. Muir had gone to France as an "Envoy or Ambassador from the Friends of the People," to aid the Revolution in that country, and to lay the plan for kindling it in his own. Nothing could be more false. The real motive which induced Mr. Muir to visit France, was, that he might shun the abominable treatment to which he was exposed in this country, and have his feelings gratified, and his mind instructed, by witnessing the astonishing change that had taken place in the habits and sentiments of a great people.

Nor did Mr. Muir leave this country for France in a sudden or clandestine manner. He openly avowed his intention of going thither;—and he took care, to instruct his agent, Mr. James Campbell, then a respectable Writer to the Signet, in Edinburgh, and latterly, an eminent, and respectable Solicitor, in London, to apprize him, the moment that any criminal Libel or Indictment was raised against him, in order that he might return home and meet it.

* Can it ever be forgotten, that Robert Burns—the immortal Bard of Scotland—who to the disgrace of his country was placed in the miserable situation of an Excise officer, from which he never was elevated, was actually on the eve of being turned out of that situation, because he presumed to advocate the cause of Reform and Liberty.—Poor Burns thus tells the story himself, in a letter to Mr. Erskine of Mar, 13th April, 1793: "Indeed (says he) but for the exertions of Mr. Graham of Fintry, who has ever been my warm and generous friend, I had, without so much as a hearing, or the slightest previous intimation, been turned adrift, with my helpless family, to all the horrors of want." And in the same letter he states that the Board of Excise had issued orders to him, "that his business was to act, *not to think;* and that whatever might be men, or measures, it was for him to be *silent* and *obedient*." Such tyranny!—and to such a man!!

Mr. Muir arrived in Paris the evening before the execution of Louis XVI:—an event which he greatly deplored, for whether or not, it was necessary, to satisfy the justice of the French nation, he saw that it would exasperate the other Crowned heads of Europe, who would likely lead their subjects into a war, and thus retard the growth of freedom. He judged rightly: Great Britain, already in an attitude of menace, blew the first trumpet, and the Nations flew to arms.

The clash of bayonets,—the fears of a foreign invasion,—the victories of Napoleon Bonaparte, &c. &c. kept down for about twenty years the voice of the Reformers. The cause itself lay dormant till the "Holy Alliance" gave it a shake in 1814, which roused the spirit of the old Reformers, and opened the eyes of the new. In 1817, thousands of Reformers transmitted petitions to Parliament, expressing their regret, that the blood, and treasure, of the nation, had been so long and lavishly squandered, upon the Continent; and now that peace was restored, they earnestly prayed, that Parliament would be pleased to turn its attention to the evil of its own ways, and satisfy the country by effecting a wise and practical Reform. We know how these petitions were treated. The Administration of Lord Liverpool, the members of which had been the apprentices of Mr. Pitt, set up the cry that the Church and the Constitution were in danger! This answered the purpose most admirably for a little. The Reformers were again accused of entertaining most horrible designs, and their petitions were scouted. They nevertheless persevered: and if thousands of Reformers existed in 1817, they increased to tens of thousands in 1819 and 1820. The cry of the Ministry now, was, that "PLOTS AND CONSPIRACIES" existed in the country and unfortunately the rash conduct of a few weak men gave a handle to the Ministry and their retainers, to run down the whole body of Reformers. The result was, that we had a few executions for High Treason,—some Gagging bills, and a suspension of the act of *Habeas Corpus*.

Enough for that period; but, judging from these examples, we are persuaded, that if the question of Reform had been fairly thrust on the attention of the Duke of Wellington and his late Ministry, they, as a dernier resort, would have appealed to these recent disgraceful burnings in England,—which every sensible man wonders at,—and every good man deplores. We have indeed heard it, somewhere quaintly stated, that "the deceased Ministry left the troubles of the country, a legacy to Earl Grey, who having taken out letters

of Administration, is acting as executor to the *Will*, of the Duke of Wellington."*

But thank God, the system of gaggery, and delusion, which so long existed in this country, is happily at an end. If, some few years ago, there was only a handful of Reformers in this country—how happens it that there are *now* millions of them? How happens it that the voice of the people is now so united, all powerful, and commanding? And that the question of Reform now lies at the heart, almost of every man, and is on the eve of being triumphantly settled?—We answer—because we have a gracious King—a liberal Ministry—and an *enlightened* People. The Boroughmongers of England, are now driven to their last ditch.—Every hour is fast finishing them.—The trade of a spy is out of repute. And the doors of the Treasury are shut, we hope for ever, against these, and all the other unprincipled men, of former times.

And now, as if to enable us, to expose the blind and crooked policy of the Pitt Administration, and to mock at the fears of the old alarmists, we, the inhabitants of Great Britain and Ireland, have clapt our hands with joy at the late glorious Revolution in France, and have openly and cordially, addressed that heroic people, calling them our friends, and brothers, in the cause of Freedom.

We beg pardon for this digression, which we hope will not be considered impertinent, and recur to the narrative.

While at Paris (where he remained for about six months), Mr. Muir was introduced to Barras, Condorcet, La Fayette, and many other noble and distinguished individuals, from whom he experienced numerous acts of hospitality and kindness. And on the 23d January, 1793, he thus writes from France, to his agent, Mr. Campbell.

"I wrote you from Calais, and from Paris, and impatiently expect your answer. Write me fully about my private affairs, but about nothing else. Whenever you and my friends judge it expedient, or proper, I will immediately return; but I cannot leave Paris without regret. I am honoured by the notice, and friendship of an amiable and distinguished circle; and to a friend of humanity, it affords much consolation to find, according feelings, in a foreign land."

And shortly afterwards, he again writes to Mr. Campbell.—

* Vide *Examiner*, 16th January, 1831.

"Whenever you think it proper I shall return. At the same time, honoured as I am, by the civilities, and attention, of many amiable characters, it would be with reluctance, I could quit Paris for a month or two."

During his absence, however, the dirty work of persecution was keenly hatching against Mr. Muir in this country. Many individuals, who enjoyed his confidence and friendship, were now strictly examined, by official functionaries, as to the tenor even of the private conversation which had passed between them. Some, who had perhaps never thought seriously on the subject, now began to look grave,—to shake their head,

> "And on the winking of authority
> To understand a law."

Others, from a pitiful desire to "curry favour" with the men in power, condescended to act like pettifoggers in procuring evidence against him. And not a few who were once proud to have called him their friend, seeing that his back was turned, and that it was fashionable to run him down, basely forsook all pretension to his esteem, and joined the ranks of his known enemies. As an example of all this, we are constrained by a sense of duty to point out one individual,—a reverend gentleman too, now no more, not for the purpose of injuring his memory, for that cannot be done, since it is already too well known, but because it is useful to see how one of the ministers of religion, conducted himself, in a *political* prosecution in this country—and at our own doors—in the year 1793.

The reverend gentleman, to whom we refer, had known Mr. Muir from his infancy. They were bosom friends,

> "Coupled and link'd together
> With all religious strength of sacred vows;"

And after Mr. Muir had gone to the bar, and was rising to eminence, this reverend friend not only kept up a correspondence with him, but used frequently to sojourn, under the hospitable roof of his parents, and to pour into their ears, sweet words of praise, about their darling son. He thus acquired their unbounded confidence. He applauded the political tenets of Mr. Muir. Nay, he was himself a reformer —at least he pretended to be so, and actually recommended some of the very books for which it will be seen Mr. Muir was afterwards condemned for the having in his possession. But the moment the ministers of the Crown denounced Mr. Muir, that moment this minister of religion turned upon him

like a serpent. His own sting would have been powerless, because, for aught that appeared, Mr. Muir had never uttered one syllable in his presence of a criminal or seditious nature;—but, in order to supply that deficiency, he did not scruple to fish for evidence against him in every quarter where he thought he would be successful. He attended the initiatory examination of some of the witnesses for the Crown before the Sheriff, and "coaxed them to speak out." And so great was his zeal for the prosecution, that when the Trial itself drew nigh, he left his parish, and voluntarily journeyed to Edinburgh, a distance of forty miles, and, *without being subpœned* he actually attempted to plant himself in the witnesses' box, as an evidence for the Crown, in regard to facts which must now rest with his own conscience. These things are not exaggerated. They were proved on the trial—and other facts of a more sickening description, were about to be unfolded by Mr. Muir, when he was prudently stopped by the Lord Advocate, who, with all his zeal for the prosecution, could not defend such evidence. If the public now, should be anxious to know the name of this reverend gentleman, we beg leave to refer them to the Appendix, where they will find it. And we grieve to add, that he was afterwards placed on the Pension List of Scotland, for no other reason that we can learn, but as a reward for his services at that period.*

We have high authority to back us, on these, and some other sore points. See, for instance, what the Edinburgh Review says, of April, 1810, No. 31:—"We speak not from hearsay, or from fancy, but from *distinct* and *personal* recollection; for fifteen years have not passed over our heads, since every part of the island, from the metropolis, to the meanest village, that supports an attorney, or a curate, seemed with the wretched vermin, whom we are in vain attempting to describe. We speak, indeed, from notes that are still fresh and legible; for turn which way we will, we now see almost all the places of profit and trust in this island, filled with persons for whose elevation we should find it hard to account, if we did not look back to their apprenticeships in 1794 and 1795. We speak from a feeling recollection; for, where did this unutterable baseness—this infinite misery—this most humiliating curse, fall so heavily, as in the very city where we now write?"

If such be the character of the Witnesses against Mr. Muir,

* Look at the Pension list—and see if there are any "Lapslies" on it still!

(though we gladly state, that there were a few most honourable exceptions among them,) the reader, we are afraid, will not be prepossessed in favour of his Judges and Jury—but every person will, of course, candidly judge for himself, on a review of the whole circumstances.

Mr. Muir was at last indicted before the High Court of Justiciary for Sedition. It was impossible for him, by reason of the war then raging, to return from France to meet his trial in Edinburgh, on the day originally fixed for it by the Crown, viz. 11th, afterwards altered to 25th February, 1793, and he wrote and transmitted the following Address "To the Friends of the People in Scotland:"

"Upon the evening of the 8th of this month I received letters from my father, and from my agent Mr. Campbell, informing me that an indictment was served against me in my absence, and that the trial was fixed for Monday the 11th instant. The distance, and the shortness of the time, could not permit me to reach Edinburgh by that day. War is declared between England and France, and the formalities requisite to be gone through, before I could procure my passport, would at least have consumed three days. I will return to Scotland without delay. To shrink from dangers would be unbecoming my own character, and your confidence. I dare challenge the most minute investigation of my public and private conduct. Armed with innocency, I appeal to justice; and I disdain to supplicate favours. I have hastened to give you an account of my intention, and I am happy that a private gentleman, who leaves Paris to-morrow, affords me an opportunity for the communication.

"THOMAS MUIR.*

"Paris, 13th February, 1793."

On the 25th February, 1793, a sentence of outlawry was moved for, and obtained by the Crown, against Mr. Muir; and in a few days afterwards, 6th March, 1793, his name, for that reason, was erased from the roll of the Faculty of Advocates;—a circumstance—however, which did not distress him, because, if he had even been acquitted on his trial, he intended immediately to have retired to the United States of America, where, we have no doubt, he would have been received with open arms. In truth, he would have been an ornament to any country.

* The original of the above Address is in the possession of Allan Fullarton, Esq. Glasgow.

In July, 1793, he landed in Ireland, on his return from France—and after remaining in Ireland for a few days, he crossed over to Portpatrick, in Scotland, anxious to reach Edinburgh to meet his accusers. He had scarcely however been an hour in Scotland, ere he was pounced on by the minions of the law, and carried straightway to the Jail of Stranraer, where he was kept for several days, till a communication was made to the Crown Lawyers at Edinburgh, from whence a messenger-at-arms was immediately despatched for him, and in his custody, as a prisoner, Mr. Muir was taken to Edinburgh early in August 1793.

On the 30th of that month he was brought to the bar of the High Court of Justiciary—and after a lengthened trial of eighteen hours, he was found guilty of SEDITION, and sentenced to Transportation for fourteen years.

A trial more important never occurred in this country. It created, at the time, uncommon interest. All classes of the community were affected by it. In Parliament, it gave rise to an interesting and solemn debate. It even attracted the attention of foreigners. And though forty years have now nearly elapsed since the trial itself occurred; and all the chief actors in it are dead and gone, we are persuaded that the short account, and exposition of it, which we have now resolved to submit to the consideration of the public, cannot be read, and especially by the lovers of rational Reform and Freedom, at this particular period, without feelings of astonishment, indignation, and regret.

Any person will at once perceive that Mr. Muir was tried and convicted, simply because he was a Reformer. This truly was "the head and front of his offending." And now we think it may be of importance to look for a little at the character and constitution of the Court before which he was tried.

We would first remark, though the fact is already well known, that an appeal lies against almost *every* decision pronounced by the Supreme *Civil* Court in Scotland—whereas no appeal lies against *any* of the decisions pronounced by the Supreme *Criminal* Court;—that is to say, a person can seek justice in the House of Lords, if it is to affect his pounds, shillings, or pence. But he cannot seek it if it is to affect his life, liberty, or repute. We don't say that this is an invidious distinction—neither do we say that the law in this respect is good or bad. We merely state the fact, with this observation, that it has frequently happened that the most grave and deliberate decisions of the Court of Session, even

pronounced unanimously by the whole Judges (fifteen in number) have, on appeal, been overturned or reversed on sound and cogent reasons in the House of Lords.

Now, we ask, might not the same thing have happened in a criminal case? For, if a judge goes wrong in the one case, is he not just as likely to go wrong in the other? Nay, is he not more likely to go wrong in the case where he knows his opinion (like the Pope's) cannot be reviewed or altered elsewhere,—than in the other, where he knows his opinion will be sifted and reviewed by the highest tribunal in the Empire? There are many other considerations which might be stated here, all tending to show that, in criminal cases, and especially in political cases, where new, nice, and delicate *points of law*, sometimes occur, (and it is only to such cases that we wish our observations to apply,) there ought to be a right of appeal to the House of Lords—or to some other Court of review—and we hope the time is not far distant when this suggestion will be adopted by the country.

At the date of Mr. Muir's trial—for a long time preceding it—and down till within the last very few years, the Judges of the Court of Justiciary were armed with a fearful extent of power in one most important particular, which we think is utterly repugnant to the right administration of justice. *They had the nomination of juries entirely in their own hands.* And it was exercised in this manner:—Whenever the trial of any offender took place, the Clerk of Court (appointed by the Court itself) handed to the presiding Judge, a list of the names of forty-five Jurymen, who were all cited to attend on the occasion. His Lordship then proceeded to *pick* out, or *select*, from the list, beginning at the top, tail, or middle of it, *the names of any fifteen jurymen he pleased*, being the number requisite to sit on the trial. And no objection could be stated by the prisoner to the Jurymen thus selected, except on the limited and special grounds of personal malice—misnomer—infamy—minority—deafness—dumbness—insanity, or relationship to the prosecutor. All other objections, however powerful, or of whatsoever nature, that might have been urged by the prisoner, were entirely disregarded. These were his Jurymen, and from them he could not fly.

Now there have been such things known, or heard of, in this country, as the "*packing*" of a Jury. The term is quite familiar. In the days of the tyrannical Stuarts, it is stated, on the authority of Lord Hailes, who was himself one of the Judges of Justiciary, that "the Prime Minister, in order to obtain a sentence agreeable to the King, (in certain political

cases,) used *to address the Judges, with promises, and threats,* TO PACK THE JURY, *and then deal with them without scruple or ceremony.*"*

We don't say, or even mean to insinuate, that such things have happened in this country within the memory of man. But we now beg to call the attention of the reader to what *actually occurred* on the trial of Mr. Muir in 1793.

After the Lord Justice Clerk, (who, be it known, was the Right Honourable Robert M'Queen of Braxfield,) had "selected" the names of the first two of Mr. Muir's Jurymen, Mr. Muir rose and stated, that "he had no personal knowledge of them—that he believed, they were highly respectable, but he nevertheless *solemnly protested* against their sitting on his trial, because they belonged to an Association who had publicly condemned his principles, and who had actually offered a reward, to discover any person who had circulated any of the political publications—of which he was accused of circulating in the indictment?" But the

* In 1821, Mr. Kennedy of Dunure, (son-in-law of the great Sir Samuel Romilly) to his everlasting honour, introduced a Bill into Parliament to put an end to "the Elements of the Art of Packing Juries," as Jeremy Bentham most fitly called them. This Bill provided that the Jury should, thereafter, be chosen by Ballot—and that the prosecutor and the prisoner should have right to challenge a certain number of them, without assigning any reason. But, strange to say, the late Lord Advocate of Scotland, Sir William Rae, took alarm at Mr. Kennedy's Bill, and actually wrote a circular letter (April 6th, 1821,) to all the Counties in Scotland, the plain English of which was to get the Counties to come forward and smother the Bill with opposition.—And the Counties, with the exception of Lanark and one or two others, most servilely, and shamefully, obeyed the call.—Some of them passed resolutions, in effect, declaring that it was contrary to the Articles of the Treaty of Union to improve the Criminal Law of Scotland!! While others had the decency to declare that Mr. Kennedy's Bill proceeded "from a restless spirit of innovation," and they "most earnestly deprecated any rash alteration on so venerable a fabric, of which no stone could be displaced without the risk of consequences, some of which perhaps human wisdom could not foresee."—Excellent language for Anti-Reformers! —What better could they employ?—But it was all cant, hypocrisy, and humbug. Sir Robert Peel, to his infinite honour, became the efficient Reformer of the Scotch Courts in this respect, for he took up the Bill of Mr. Kennedy—and carried it successfully through the House of Commons. And why?—Because it was founded on principles of truth and justice—congenial to the spirit of the age.—Yet Sir Robert Peel now refuses to reform the more glaring absurdities of the rotten Boroughs of England! Admirable consistency.—We hope that, as this distinguished Baronet *changed* his mind on the Catholic Question, he will again do so on the Reform Question, though he happens to be a *pro indiviso* proprietor of a rotten Borough.

Court unanimously repelled the objection. And we state it as a matter of fact, that the whole of Mr. Muir's fifteen Jurymen were members of that Association, who had already virtually condemned him. And it turns out that the *Foreman* of this Jury was one of the most active members of that Association—and one of a Committee who had previously poured out their anathemas on his very name!

As soon as these Jurymen had been all selected and sworn by the Court, Mr. Muir again rose, and solemnly stated, that "he would never cease recalling to their attention the peculiarity of their situation—they had already determined his fate—they had already judged his cause—and as they valued their reputation, their own internal peace he entreated——

Here he was "*stopped by the Court*, who concurred in opinion, that his conduct was extremely improper in thus taking up their time, as the objection had been repelled."

From that moment Mr. Muir saw that the scales of justice were turned against him—that his doom was fixed, and hence throughout the whole subsequent trial, he seems to have exerted himself with almost supernatural talent, in order that posterity might judge of him, and know how he was treated. His defence, so eloquent and convincing, forcibly reminds us of the ancient orators of Greece and Rome, nor is it, we think, eclipsed by any of the splendid orations of our own immortal Erskine, who, like Muir, only shone the more brilliantly when his talents were exerted in the cause of liberty.

Yet this defence, though it penetrated the hearts of the whole audience, in a crowded Court, even to the shedding of tears, had no effect on any of his Judges. They alone stood unmoved by it. This, to be sure, might all be well enough, if we, of this generation, could shut our eyes to the extraordinary tone and temper which seems to have been manifested by these Judges at that particular period.

The Lord Justice-Clerk M'Queen, when pronouncing the sentence of the Court against Mr. Muir, took occasion to say that "the indecent applause which was given the pannel last night, convinced him that a spirit of discontent still lurked in the minds of the people, and that it would be dangerous to allow him to remain in this country. His Lordship said THIS CIRCUMSTANCE HAD NO LITTLE WEIGHT WITH HIM WHEN CONSIDERING OF THE PUNISHMENT MR. MUIR DESERVED!!"

We have a few other extraordinary things to relate. On the trial of Maurice Margarot—another Reformer—who was tried before the same Court soon after Mr. Muir, the follow-

ing scene occurred, which we confess fairly baffles every thing that we have ever seen, heard, or read of, in judicial procedure.—The Star Chamber is nothing to it.

*Mr. Margarot.* "Now, my Lord, comes a very delicate matter indeed. I mean to call upon my Lord Justice Clerk, and I hope that the questions, and the answers, will be given in the most solemn manner. I have received a piece of information, which I shall lay before the Court, in the course of my questions: *first*, my Lord, Are you upon oath?"

*Lord Justice Clerk.* "State your questions, and I will tell you, whether I will answer them or not; if they are proper questions I will answer them."

*Q.* "Did you dine at Mr. Rochead's, at Inverleith, in the course of last week?"

*Lord Justice Clerk.* "And what have you to do with that, Sir?"

*Q.* "Did any conversation take place with regard to my trial?"

*Lord Justice Clerk.* "Go on, Sir!"

*Q.* "Did you use these words?—'What should you think of giving him an hundred lashes, together with Botany Bay?' or words to that purpose?"

*Lord Justice Clerk.* "Go on;—put your questions, if you have any more."

*Q.* "Did any person, did a lady say to you, that the people would not allow you to whip him? and, my Lord—*did you not say, that the mob would be the better for losing a little blood?*—These are the questions, my Lord, that I wish to put to you at present, in the presence of the Court: deny them, or acknowledge them."

*Lord Justice Clerk.* "Do you think I should answer questions of that sort, my Lord Henderland?"

*Lord Henderland.* "No, my Lord, they do not relate to this trial."

The rest of the Judges concurred in this opinion—and so the questions, very properly, were not answered!

But we earnestly entreat our readers to turn up to the list of Mr. Muir's jurymen, and they will discover this astonishing fact, that James Rochead, of Inverleith, in whose house the Lord Justice Clerk of Scotland was alleged to have made use of the above horrible language, was one of the Jurymen selected by his Lordship, and one who actually sat on the trial of Mr. Muir!!!

The same thing occurred, but in a more direct and tangible shape, in the case of Joseph Gerald, another Reformer, who was also tried before the same Court, about the same period.

10th March, 1794. When the Court met, Mr. Gerald rose and said, "My Lords, I feel myself under the painful necessity of objecting to the Lord Justice Clerk sitting upon that bench, upon this plea, that his Lordship has deviated from the strict line of his duty, in prejudging that cause in which my fortune and my fame, which is more precious to me than life, is actually concerned. I beg, therefore, that this (holding a paper in his hand) may be made a minute of this Court."

"In order to show that this objection was not made at random, Joseph Gerald *offered to prove that* the Lord Justice Clerk *had prejudged the cause of every person who had been a member of that Assembly calling itself the British Convention:* inasmuch as he had asserted, in the house of James Rochead, of Inverleith, 'that the members of the British Convention deserved transportation for fourteen years, and even public whipping;'—and that when it was objected, by a person present in company, that the people would not patiently endure the inflicting of that punishment upon the members of the British Convention, the said Lord Justice Clerk replied, that the mob would be the better for the spilling of a little blood. I pray that this may be made a minute of the Court. *I desire to have the matters alleged, substantiated by evidence.*"

*Lord Eskgrove.* "My Lords,—This objection which comes before your Lordships, is a novelty in many respects; and I don't think this pannel, at this bar, is well advised in making it: what could be his motive for it I cannot perceive. He has the happiness of being tried before one of the ablest Judges that ever sat in this Court; but he is to do as he thinks fit. I am sure he can obtain no benefit if he gains the end he has in view; and therefore I cannot perceive his motive, unless it is an inclination, as far as he can, to throw an indignity upon this Court." And after some farther remarks, his Lordship concluded by saying, "that *he could ascribe the objection to nothing but malevolence and desperation.*"

*Mr. Gerald.* "My Lord, I come here not to be the object of personal abuse, but to meet the justice of my country."

*Lord Henderland.* "I desire you will behave as becomes a man before this High Court. I will not suffer this Court to be insulted."

*Mr. Gerald.* "My Lord—Far be it from me to insult this Court."

*Lord Henderland.* "Be silent, Sir."

*Mr. Gerald.* "My Lord ——"

*Lord Henderland.* "I desire you will be silent Sir!"

*Lord Swinton.* "My Lords—An objection of this kind,

coming from any other man, I should consider as a very high insult upon the dignity of this Court; but coming from him standing in the peculiar situation in which he now stands at the bar, charged with a crime of little less than treason, the insolence of his objection is swallowed up in the atrocity of his crime. It appears to me that there is not the smallest relevancy in this objection."

*Lord Dunsinan.* "I think your Lordships ought to pay no attention to it, either in one shape or another."

The objection was unanimously disregarded!

On the trial of William Skirving, another former, and by all accounts, a most amiable man,

"The Lord Justice Clerk proceeded to nominate the first five of the Jury—and asked the pannel if he had any objection to them."

*Mr. Skirving.* "I object, in general, to all those who are members of the Goldsmiths' Hall Association. And, in the second place, I would object to all those who hold places under Government, because this is a prosecution by Government against me; and, therefore, I apprehend they cannot with freedom of mind judge in a case where they are materially parties."

*Lord Eskgrove.* "This gentleman's objection is, that his Jury ought to consist of the Convention of the Friends of the People —that every person wishing to support Government, is incapable of passing upon his Assize. And, by making this objection, the pannel is avowing, that it was their purpose to overturn the Government."

*Lord Justice Clerk.* "Does any of your Lordships think otherwise? I dare say not."

Objection repelled.

We had almost omitted to state, that in Margarot's trial the Lord Justice Clerk, first of all, asked the pannel if he had any objection to his Jurymen.

*Mr. Margarot* replied, "I have no personal objection; but I must beg to know by what law you have the picking of the Jury, and that you alone have the picking of them?"

*Lord Abercrombie.* "His Lordship is not picking but naming the Jury, according to the established law, and the established constitution of the country; and the gentleman at the bar *has no right to put such a question!*"

The above, then, is a brief outline of the way in which the whole of these Reformers—the *pannels*—were treated by the Bench. And we shall now give a few examples of the way in which some of the *witnesses* were treated, when it was found they did not answer the purposes of the prosecution.

Margarot's Trial, p. 89. "*James Calder* sworn.

"*Lord Henderland.* What is your trade?

"*A.* I have no trade.

"*Lord Eskgrove.* If you have no trade, how do you live?

"*A.* I am neither a placeman nor pensioner.

"*Lord Justice Clerk,* (turning himself to the Judges). What do you think of that, my Lords?

"*Lord Henderland.* What do you call yourself?

"*A.* A friend of the people.

"*Q.* You don't live by that—you must have some occupation?

"*A.* I am maintained by my father, Donald Calder, merchant in Cromarty.

"*Lord Justice Clerk.* Ho! my Lords, he was sent up to the British Convention.

"*Witness.* No, my Lords, I was not.

"*Lord Advocate.* I understand he is a student at the University.

"*A.* Yes,—I am."

Gerald's Trial, p. 151. "Alexander Aitcheson, sworn.

"*Lord Justice Clerk.* You are not come here to give dissertations either on the one side or the other. You are to answer to facts according to the best of your recollection, and, according to the great oath you have taken, answer the facts that are asked of you.

"*A.* My Lord, I wish to pay all due respect to your Lordship and this Court; but I consider myself as in the presence not only of your Lordship, but also as in the presence of the King of kings and Lord of lords; and, therefore, as bound by my oath, to say every thing that I can consistently with truth, to exculpate this pannel, who, I am sure, is an innocent man.

"*Mr. Solicitor General.* Many things you have now said, will, in my opinion, tend to do more hurt than good to the pannel.

"*Witness.* Of that, the gentlemen of the Jury will judge.

"*Lord Justice Clerk.* Mr. Solicitor General, it is needless to put any more questions to this man.

"*Solicitor General.* I shall put no more, my Lord.

"*Witness was ordered to withdraw.*

"*Lord Justice Clerk. Put him out then. Put him out!*"

Margarot's Trial, p. 68. "Witness, *Aitcheson.*

"*Q.* Did you ever observe any thing of a seditious or riotous appearance in the Convention?

"*A.* Not in the least.

"*Q.* Did you ever hear any thing mentioned, or whispered in the Convention, that might tend to overturn the Constitution?

"*A.* Never.

"*Q.* Did you ever hear any thing mentioned there against placemen and pensioners?

"*A.* Often.

"*Mr. Margarot.* That, I suppose, is the sedition that is meant to be charged."

No further questions were put to this witness.

Page 80. "John Wardlaw.

"*Q.* What is your profession?

"*A.* A Writer.

"*Q.* Did you see Mr. Margarot sign it?—(*i. e.* a Minute of a Meeting of Delegates for Reform.)

"*A.* I don't recollect his signing it. I don't recollect whether he wrote it or not. Mr. Margarot is a man of courage, and a man of honour, and a man of virtue—and a man that would not deny his word—by God.

"*Lord Justice Clerk.* What is that you say?

"*A.* I said he would not deny his word.

"*Lord Justice Clerk.* But you said something else.

"*A.* I said, by God.

"*Lord Justice Clerk.* He is either drunk, or affecting to be drunk. My own opinion is, that he is affecting to be drunk: and, supposing he is not affecting drunkenness, he ought not to get drunk, knowing that he was to be called here as a witness.

"*Lord Henderland.* I move that he be committed to prison for a month."

And he was committed!

We hope we do not go too far when we express our belief, that no Judge in this country, now-a-days, could venture to imitate some of these examples of his predecessors, in these political trials, without having his conduct instantly impeached;—and we think the present Administration, with the Lord Chancellor at its head, would not shield him with their countenance or protection. It would be desirable, we think, if all these obnoxious scenes could now be expunged from the criminal annals of the country. Our comfort, however, is, that they can never be re-acted again. We are now blessed with able, independent, liberal, and virtuous Judges, in whom the country (alive to its own dignity,) justly reposes the most unbounded confidence.

We think it right to mention, that the Reformers, to whom we have alluded, viz. Skirving, Gerald, and Margarot, were tried one after another, and all defended themselves with great spirit and ability. The speech of Gerald, in particular, was

admirable. We regret our limits will not enable us to transcribe some eloquent and beautiful passages of it, especially as it was thus noticed by the Lord Justice Clerk, in his charge to the Jury:

"Gentlemen, when you see Mr. Gerald taking a very active part, (*i. e.* in the cause of Reform,) and making speeches such as you have heard to-day, *I look upon him as a very dangerous member of society;* for, I dare say, he has eloquence enough to persuade the people to rise in arms."—*Mr. Gerald.* "Oh, my Lord, my Lord, this is a very improper way of addressing a Jury—it is descending to personal abuse. God forbid that my eloquence should ever be made use of, for such a purpose."—*Lord Justice Clerk.* "Mr. Gerald, I don't say that you did so, but that you had abilities to do it."

It is almost unnecessary to add, that all these Reformers, like their distinguished coadjutor, Mr. Muir, were found guilty of sedition, and sentenced to fourteen years' transportation. We have made inquiry, and find that not one of them now survives.

We cannot leave this part of the subject without stating, and we do it with pride and gratitude, that the Hon. JOHN CLERK, now Lord ELDIN, and the Hon. ADAM GILLIES, now Lord GILLIES, who were then young and rising Counsel at the Bar, almost of the same standing with Mr. Muir, animated by those principles of independence and justice which have ever distinguished their long and valuable lives, nobly stepped forward and endeavoured to arrest the dreadful powers assumed by the Court. In the case of Gerald, Mr. Gillies set out "*directly* and *strongly* maintaining, that other views OUGHT to have guided their Lordships' judgment formerly, and that other views OUGHT to guide it now."* But every effort in favour of a Reformer was utterly unavailing. The Judges of the Court of Justiciary absolutely went the length of declaring, that the conduct of these Reformers "*amounted almost to a species of high treason,*" and that "a little more" would have made them "stand trial for their lives!"

And, indeed, in the case of Mr. Muir, we think it would have been humane and merciful if his life had been at once taken from him; for who can read the following account of the subsequent treatment he met with in this country without horror and dismay.† "Edinburgh, Nov. 15, 1793: About

* Vide speech of Mr. Gillies, now Lord Gillies, in the Trial of Joseph Gerald, p. 31.

† Scots Magazine, vol. lv. p. 617.

eleven o'clock, forenoon, Mr. Thomas Muir, younger of Huntershill, was taken from Edinburgh Tolbooth, and conveyed to Newhaven in a coach, where he was sent on board the Royal George, Excise yacht, Captain Ogilvie, lying in Leith Roads, for London. There were sent along with him, John Grant, who was convicted of forgery at Inverness; John Stirling, for robbing Nellfield house; —— Bearhope, for stealing watches; and James M'Kay, lately *condemned to death* for street robbery, but who afterwards obtained a respite during his Majesty's pleasure. Mr. Palmer was also sent to London, in the same vessel, and on their arrival they were put *on board the Hulks* at Woolwich."

"*London, Dec.* 1, 1793. Mr. Thomas Muir and the Rev. T. F. Palmer arrived in the River, from Leith, on board a revenue cutter. Orders were sent down for delivering them to Duncan Campbell, the contractor for the Hulks at Woolwich, the former in the Prudentia, and the latter in the Stanislaus. *They were in* IRONS *among the convicts, and were ordered yesterday to assist them, in the common labour on the banks of the River.* Mr. Muir *is associated with about* 300 *convicts, among whom he and Mr. Palmer slept after their arrival.* Mr. Muir is rather depressed in spirits, but Mr. Palmer appears to sustain his misfortune with greater fortitude."*

It affords some consolation, however, to the friends of humanity, to know that the case of Mr. Muir did not escape the notice of a few virtuous and patriotic men, at that time in Parliament. They, too, struggled for him, but in vain. On the 10th of March, 1794, our own distinguished countryman, the Right Hon. WILLIAM ADAM—now the venerable LORD CHIEF COMMISSIONER of the Jury Court in Scotland—made a splendid speech, of three hours' duration, in the House of Commons, in which he reprobated the whole of the proceedings against Mr. Muir. And we have peculiar pleasure in stating, that this is not the only occasion on which this amiable and excellent Judge appears to have exerted himself in the cause of the people. His Lordship at once took the direct course of moving AN ADDRESS TO THE CROWN, on behalf of Mr. Muir.

The motion was seconded by Mr. Fox.

It was opposed by the Lord Advocate, and by Mr. Pitt. And if any one will take the trouble to peruse the debates in Parliament at that period, he will find that stronger language

* Vide Annual Register, for 1793, p. 47.

was used by the greatest statesmen of the age, (Fox and Sheridan, especially,) condemnatory of these political Trials in Scotland, than was ever uttered within the walls of Parliament, even during the days of the immortal Hampden. We refer our readers to the Appendix for a short abridgment of it.

On a division the numbers were—

| | |
|---|---|
| For the motion of Mr. Adam, . . | 32 |
| Against it, . . . . . | 171 |
| Majority against the motion, . | 139 |

April 15, 1794. The Earl of Lauderdale, too, after a speech of nearly four hours, introduced a similar motion in the House of Lords, which was seconded by the late Earl of Stanhope, —but it met with a worse result, for it was negatived without a division.

We beg our readers to remember, that all this took place under the Administration of Mr. Pitt. "After *he* had once forsworn the errors of his way, (*i. e.* his early zeal for Reform,) and said to corruption, 'thou art my brother,' and called power, or rather *place*, his god, the sight of a Reformer became a spectre to his eyes—he detested it as the wicked do the light—as tyrants do the history of their own times, which haunts their repose even after the conscience has ceased to sting their souls.—We must be pardoned for using this language.—We know of no epithet too harsh for him, who was profligate enough to thirst for the blood of his former associates in reform—of the very men whom his own eloquence, and the protection of his high station, had seduced into popular courses;—and not content with deserting them, to use the power which he had mounted on their backs, for the purpose of their destruction! When the wars and the taxes, which we owe to the lamentable policy of this rash statesman, shall be forgotten, and the turmoils of this factious age shall live only in historical record;—when those venal crowds shall be no more, who now subsist on the spoil of the myriads whom he has undone—the passage of this great orator's life which will excite the most lively emotions, will be that where his apostasies are enrolled—where the case of the African slave and of the Irish Catholic stand black in the sight; but most of all will the heart shudder at his persecutions of the Reformers, and at his attempt to naturalize, in England, a system of proscription, which nothing but the trial by Jury, and by

*English Judges*, could have prevented from sinking the whole land in infamy and blood."*

Soon after the division in Parliament, the sentence against Mr. Muir was carried into farther execution. He was shipped off to Botany Bay. Yes, reader, we grieve to state, that a man of his high talents, and refined feelings, was placed in chains—beside the most atrocious criminals, the refuse and dregs of the human race; and, in such company, he was sent to eke out his existence on the desolate shores of the remote Southern Ocean!

And for what?—We will not trust ourselves to say any thing more on that point. Read his Defence.

It is impossible to form any adequate conception of the state in which Mr. Muir's feelings must have been, when he left England. The reader is left to fancy them if he can. For it does not appear, at least we have not been able to discover, that Mr. Muir committed to writing any observation, or remonstrance either on the subject of his trial, or the treatment to which he was latterly subjected. He seems to have submitted to his fate with calm dignity.—

"A Roman, with a Roman's heart, can suffer."†

His venerable parents were permitted to visit him before he sailed from Leith Roads.—But such a visit! Their hearts were "wrung and riven"—not in consequence of any moral turpitude, or disgrace which he had brought upon them, for a worthier and more affectionate son never breathed. But surely the bare idea, that he in whom all their earthly hopes centered was about to be torn from them, and sent to exile, for a length of years, was of itself sufficient to fill their cup of affliction, without the above appalling fact that he was placed in chains, and treated worse than the veriest slave, in the land, too, where we have been exultingly told, no slave ever trod!

"That man should thus encroach on fellow-man,
Abridge him of his just and native rights,
Eradicate him,—tear him from his hold
Upon the endearments of domestic life

* Edinburgh Review, April, 1810, p. 120.

It will be observed, that Hardy, Tooke, and other Reformers, were also tried in England, in 1793—94; and so anxious were the Ministry to get a conviction against them, that the present Earl of Eldon, then Sir John Scott, Attorney-General, spoke for upwards of eight hours against Hardy. Lord Erskine dashed his sophistry to pieces by such a torrent of manly eloquence, that the Jury returned a verdict of Not Guilty.

† Since writing thus far, we have discovered an affecting letter, written by Mr. Muir to a friend at Cambridge, which is printed in the Appendix.

And social, nip his fruitfulness and use
And doom him *for perhaps a heedless word*,
To barrenness,—and solitude—and tears,
Moves indignation—makes the name of power
As dreadful as the Manichean God—
Adored through fear—strong only to destroy."

The Reformers of England—through their corresponding Society in London—transmitted to Mr. Muir, and to Messrs. Gerald, Palmer, Margarot, and Skirving, the following animated

ADDRESS:

"We behold in you, our beloved and respected friend and fellow-citizen, a martyr to the glorious cause of Equal Representation, and we cannot permit you to leave this degraded country, without expressing the infinite obligations the people at large, and we in particular, owe to you, for your very spirited exertions in that cause upon every occasion; but upon none more conspicuously than during the sitting of the BRITISH CONVENTION of the PEOPLE at Edinburgh, and the consequent proceeding (we will not call it trial) at the bar of the Court of Justiciary.

"We know not what most deserves our admiration, the splendid talents with which you are so eminently distinguished, the exalted virtues by which they have been directed, the perseverance and undaunted firmness which you so nobly displayed in resisting the wrongs of your insulted and oppressed country, or, your present manly and philosophical suffering under an arbitrary, and, till of late, unprecedented sentence—a sentence, one of the most vindictive and cruel that has been pronounced since the days of that most infamous and ever-to-be-detested Court of Star Chamber, the enormous tyranny of which cost the first Charles his head.

"To you and to your associates we feel ourselves most deeply indebted. For us it is, that you are suffering the sentence of transportation with felons, the vilest outcasts of society! For us it is, that you are doomed to the inhospitable shores of New Holland; where, however, we doubt not you will experience considerable alleviation by the remembrance of that virtuous conduct for which it is imposed on you, and by the sincere regard and esteem of your fellow-citizens.

"The equal laws of this country have, for ages past, been the boast of its inhabitants: but, whither are they now fled? We are animated by the same sentiments, are daily repeating the same words, and committing the same actions for which you are thus infamously sentenced; and we will repeat and commit them until we have obtained redress; yet we are un-

punished! Either therefore the law is unjust towards you, in inflicting punishment on the exertions of virtue and talents, or it ought not to deprive us of our share in the GLORY of the martyrdom.

"We again, therefore, pledge ourselves to you and to our country, never to cease demanding our rights from those who have usurped them, until, having obtained an Equal Representation of the People, we shall be enabled to hail you once more with triumph to your native country. We wish you health and happiness; and be assured we never, never shall forget your name, your virtues, nor YOUR GREAT EXAMPLE.

"The London Corresponding Society.

"JOHN LOVETT, Chairman.

"THOMAS HARDY, Secretary.

"The 14th of April, 1794."

Considering the advanced age of Mr. Muir's parents, they parted with him under the conviction that they could not survive the term of his sentence, or meet him again in this world. Neither they did. But he anxiously endeavoured to soothe their feelings, and to elevate their thoughts, by pointing, like Anaxagoras, to the heavens.

This trying scene broke down the constitution of his father. He was struck with a shock of palsy, from which he never recovered. And his poor mother, so powerful was her affection for her devoted son, periled her own life, by making frequent excursions to sea in an open boat in the winter of 1793, in order that she might again catch a glimpse of him, and give vent to her agonized feelings.

During the last of these excursions, but before she could approach near enough to recognise him, the vessel in which Mr. Muir was, got under weigh. And if the agony of mortals could have any effect on the elements of nature, these very elements at that time would have stood motionless on account of Thomas Muir.

One of the last requests he made to his parents was, to furnish him with a small pocket Bible; and we mention that circumstance, because it will be seen how highly he prized that precious relic, and how miraculously it preserved his life under the extraordinary vicissitudes that afterwards befell him.

There were 83 convicts on board the Surprise transport, which carried him from England. His fellow-Reformers, Palmer, Skirving, and Margarot, were among them. But there was another individual of a very different description, indeed, in whose society Mr. Muir at one time little thought

he could sojourn for a single hour. This was a man of the name of Henderson, belonging to Glasgow, who had been tried there by the Circuit Court of Justiciary, about two years before, for the *Murder* of his wife. And strange to tell, Mr. Muir had been his counsel. He pled successfully for him, as Henderson's Jury, instead of a verdict of Murder, brought in a verdict of Culpable Homicide, which saved the culprit's neck, and now he was going to expiate his crime under a like sentence of transportation for fourteen years!—Oh tempora! O mores! What a commentary on the different degrees of punishment!—What a lesson to philanthropists on the classification of prisoners!

After a tedious voyage, the Surprise arrived at Sydney on the 25th Sept. 1794. It was alleged that symptoms of mutiny had broken out during the voyage, on the part of some of the convicts; but nothing of the kind was imputed to Mr. Muir, or to Palmer, Skirving, or Margarot, who conducted themselves with the utmost propriety.

When they reached Sydney, they were placed, like the other convicts, under the surveillance, or at the disposal of the Authorities in that Colony. But we have much pleasure in stating, that every indulgence appears to have been shown to Mr. Muir, compatible with the strict rules of the place. In fact, the treatment Mr. Muir received at Sydney, was a thousand times milder than the treatment he had received in England.—He was no longer yoked in chains, and set to hard labour, like the brutes that perish.—He was no longer despised and upbraided for the political principles he professed. His inoffensive and gentlemanly deportment commanded the respect, even of hardened criminals and wild savages, which is more than can be said of some of his civilized and enlightened countrymen, then nearer home.

On the 13th Dec. 1794,—about three months after his arrival,—Mr. Muir thus writes to one of his friends—Mr. Moffat, Solicitor, in London:

"I am pleased with my situation, as much as a man can be, separated from all he loved and respected. Palmer, Skirving, and myself, live in the utmost harmony. From our society Maurice Margarot is expelled. Of our treatment here, I cannot speak too highly. Gratitude will for ever bind me to the officers, civil and military. I have been constantly occupied in preparing the evidence and the defence of Palmer and Skirving. I have a neat little house here, and another two miles distant, at a farm across the water, which I purchased. When any money is transmitted, cause a considerable part

of it to be laid out at the Cape, or at Rio, in rum, tobacco, and sugar, which are invaluable, and the only medium of exchange." &c. &c.

At the date of Mr. Muir's sentence, the colony of New South Wales (now of such vast consequence) was only in its infancy, and hardly known, except to a few intrepid navigators. They first shipment of convicts to it, from this country, was made in the year 1785. And when Mr. Muir reached it, nine years afterwards, there were scarcely 1500 individuals in it altogether. He laboured, with his own hands, to improve and cultivate the land he had purchased, and which, till then, was in a state of native wildness; and, in remembrance of his patrimonial title and estate in Scotland, he called it Huntershill, by which name we hope it is still known.

We select the following letter from the then Governor of the Colony—the late John Hunter, Esq.—to one of his friends in Leith, as it is highly creditable to all the parties concerned:

"N. S. Wales, 16th Oct. 1795.

"The four gentlemen, whom the activity of the Magistrates of Edinburgh provided for our Colony, I have seen and conversed with separately, since my arrival here. They seem all of them gifted in the powers of conversation. Muir was the first I saw. I thought him a sensible young man, of a very retired turn, which, certainly, his situation in this country will give him an opportunity of indulging. He said nothing on the severity of his fate, but seemed to bear his circumstances with a proper degree of fortitude and resignation. Skirving was the next I saw; he appeared to me to be a sensible, well-informed man—not young, perhaps 50. He is fond of farming, and has purchased a piece of ground, and makes good use of it, which will, by and by, turn to his advantage. Palmer paid me the next visit: he is said to be a turbulent, restless kind of man. It may be so—but I must do him the justice to say, that I have seen nothing of that disposition in him, since my arrival. Margarot seems to be a lively, facetious, talkative man—complained heavily of the injustice of his sentence, in which, however, he found I could not agree with him. I chose to appoint a time for seeing each separately—and, on the whole, I have to say, that their general conduct is quiet,—decent,—and orderly. If it continues so, they will not find me disposed to be harsh or distressing to them."*

Poor Gerald—in the last stage of a consumption—only

* Vide Edinburgh Advertiser, 1796.

reached the colony three weaks after the above letter was written. He scarcely survived three months; for we find he died on the 16th March, 1796: and Skirving died three days afterwards.

From all the information we have obtained—and from the best attention we have been able to give this subject, we are satisfied that Mr. Muir entertained no other idea than that he would be obliged to implement the whole term of his sentence at Sydney, unless death itself would cut it short. He was, therefore, becoming gradually reconciled to his situation, dreary and degrading though it must have been, and he employed every moment of his time to the best advantage.—He wrote Commentaries on the Trial of Palmer, Skirving, &c.;—and he began to write a Treatise on the "Libel Law of Scotland,"—a task for which he was well qualified—but we regret that none of these productions appear to have found their way to this country, and it is impossible for us to tell, whether any of them are now in existence, anxious though we have been to ascertain the fact. We know, however, positively, that his conduct at Sydney was still marked by the distinguishing features of Christian faith and charity, which led him devoutly to desire the welfare and happiness of the whole human race. He acted on these principles to the utmost extent of his now narrow means. He took pleasure in improving the mental and corporeal condition of the wretched and less favoured criminals who surrounded him—one proof of which, is the fact, that whereas at that period, there was scarcely a Bible in the Colony, and religious instruction had there very few friends, he used to write, and sometimes to print, with his own hand, some of the most instructive and sublime portions of his own favourite Bible—and to distribute them among such individuals as he thought would really be benefited by them. This he did, from the most exalted motives, devoid altogether of that vain show of ostentation, and scandalous hypocrisy, which is too often practised in this country, and makes religion the laughing-stock of its enemies.

We come now to an interesting part of Mr. Muir's history:

His trial in Scotland was reprinted and published in the United States of America, where he was likewise regarded as a martyr in the cause of Freedom. The immortal WASHINGTON became interested in his behalf. And some generous men in that hemisphere, touched with sympathy for his sufferings, (for they knew how he had been treated in England,) formed the bold project of rescuing him from cap-

tivity at all hazards. Unknown to Mr. Muir, and at their own expense, an American ship, called the Otter, commanded by Captain Dawes, was fitted out for the above purpose at New York, and despatched for Sydney, towards the middle of the year 1795. She anchored in the Cove at Sydney, on the 25th January, 1796. Captain Dawes, and a few of his crew, who were now aware of the secret, landed almost at the very spot where Mr. Muir was. They did so under the pretence that they were proceeding on a voyage to China, and were in want of fuel and fresh water. No suspicion was excited on the part of the authorities. After reconnoitering, with breathless anxiety, for a few days, Captain Dawes discovered Mr. Muir, and had a short conversation with him. It must have been interesting and gratifying in the extreme to both parties. Not a moment was now to be lost. Mr. Muir readily embraced his generous benefactor—and on the morning of the 11th February, 1796, he was safely taken on board the Otter—and that vessel instantly set sail and departed from Sydney.

Mr. Muir took nothing with him from thence, for ' ideed he had almost nothing to take except a few articles of dress, and his Bible. It is doubtful whether he had an opportunity of conversing with his friends, Palmer and Skirving, &c.—or of making them acquainted with the unexpected means, which had now offered for his escape, so as they also might have gone with him. It is also doubtful whether he made any disposal of the property he had there purchased.

In the month of March following, we find that Margarot thus writes to his friend Mr. Thomas Hardy, of London:* "Mr. Muir has found means to escape hence on board an American vessel, which put in here under pretence of wanting wood and water. She is named the Otter, Captain Dawes, from what port in America I know not. It is reported she came in here for as many of us as chose to go."

It is here pleasant to add that Mr. Muir left a letter for the Governor at Sydney, expressing his grateful thanks for the kindness he had shown to him—and intimating that he was now on his way to the United States of America.†

Preparations were there making for receiving him as an adopted Son and Citizen. And if Fate had permitted, we have little doubt that Mr. Muir would have become one of the most distinguished ornaments at the American bar. The very sufferings he had endured in the cause of freedom, would

* Vide Edinburgh Advertiser, of 1799, p. 109.
† Vide Paterson's History of New South Wales, p. 230.

have gained him friends in that free country, independent altogether of his matchless talents.

But he now became the child of misfortune. After being at sea about four months, the Otter was shipwrecked. She struck a chain of sunken rocks near Nootka Sound, on the west coast of North America—and went to pieces. Every soul on board perished except Mr. Muir and two sailors! They alone reached the shore, scarcely in life; and after wandering about for some days in a state of great bodily and mental distress, they were captured by a tribe of Indians, at whose hands they looked for nothing but cruelty and death. Mr. Muir was soon separated from his unfortunate companions, and never knew whether they survived, or what became of them. Contrary to his own forebodings, the Indians treated him with singular kindness. He must, we imagine, have secured their regard, more by his personal appearance and manners than any thing else, since he had no presents to offer them, all that remained in his possession being the clothes on his body—a few dollars—and his pocket Bible, which last he was in use to carry about with him on all occasions. He prudently complied with the manners of the Indians, by daubing his person with paints and other embellishments, in which they delighted. And he partook contentedly of the fare which they offered him, consisting generally of the raw flesh and oil, &c. of the wild animals of that region.

After living with these Indians for about three weeks, he contrived to effect his escape from them. He had now no human being to direct his course. The stars of heaven were his only guides. And in this most abject and forlorn condition he travelled almost the whole of the western coast of North America, a distance of upwards of 4000 miles, without meeting with any interruption. When he laid himself down to repose, by night or by day, in the open air, or under the shade of some convenient place, he always recommended his soul to the merciful protection of his Maker. And when he was enabled to appease the cravings of hunger—or to quench his thirst, as to which he often endured great distress, he did not forget the prayer that was due from him as a Christian.

He at last reached the city of Panama, the first civilized place he had seen since he left Sydney. It was then under the jurisdiction of the Old Spaniards, who were extremely jealous of the appearance of any stranger in their dominions. Mr. Muir fortunately had acquired some knowledge of the

Spanish language, and he found his way to the presence of the Governor, who was struck with his dejected and miserable appearance, for by this time Mr. Muir had scarcely a stitch of clothes on his body, and his feet, as may well be supposed, were sorely cut up. Influenced by the principles of probity and honour, which he ever regarded, Mr. Muir at once ventured to relate to the Governor a history of his misfortunes, determined to abide by the consequences, whether good or bad. He had the satisfaction to find that the Governor listened to him with attention. And the result was, that an order was instantly issued for supplying Mr. Muir with nourishment and raiment. This hospitable conduct greatly comforted him, especially as the Governor gave further orders that after resting in Panama for a few days he should be escorted on his journey across the Isthmus of Darien, by guides who were to be sent purposely with him.

After crossing that singular tract of country Mr. Muir directed his course to Vera Cruz, the grand sea-port of Mexico, in the hope that he would find a vessel wherein he might be carried to some port in the United States. On reaching Vera Cruz, (a journey of upwards of one thousand miles, and still performed on foot,) Mr. Muir also waited on the Governor of that place, and made his situation known to him. He even endeavoured to explain to the Governor the reason why he had been transported from England. We doubt whether this was prudent, and can only defend it on the ground that if Mr. Muir had not given this true and rational account of himself, he might have been seized as a spy, and instantly strangled or shot. A true tale of misery seldom misses the heart. And, accordingly, the Governor of Vera Cruz, no vessel being there for America, generously undertook to provide him with a passage in the first vessel that sailed for the Havannah. Mr. Muir was now afflicted with a severe attack of yellow fever, which soon levels the stoutest constitution in that unhealthy quarter, but his life was still spared to him for a little. And, though he was a stranger and pennyless, every considerate and humane attention was paid to him by the Spaniards. On his recovery he was taken on board one of their vessels for the Havannah, where he was soon safely landed. But it seems the Governor of Vera Cruz had transmitted a despatch to the Governor at the Havannah, stating, that though he had shown every civility to Mr. Muir, he considered that a man of *his principles* would be dangerous in the Spanish dominions, and therefore recommended that Mr. Muir should be sent home by the

earliest opportunity to the mother country, in order that the King of Spain might determine what should be done with him. On this hint the Governor at the Havannah now acted. Mr. Muir was transmitted to a prison, or castle, called La Principe, on the north side of the Island of Cuba. He was obliged to sleep in a damp and filthy bed, which brought upon him acute rheumatic pains, and a loathsome disease, at which the heart sickens. Some humane Spaniard sent him a change of clean linen—the greatest luxury he had enjoyed for a long time. And though his confinement was not rigorous, he was greatly vexed to find that there was no American Consul, or Agent, at that time at the Havannah, to whom he could have applied for relief—his ardent wish still being to reach the United States, if possible.

Having thus been detained at La Principe for about four weeks, he was informed that he would now be transmitted to Spain, in one of two Spanish frigates then receiving a rich cargo of specie for the Government at home. During the voyage, he wrought, and was treated like one of the common sailors. But now we come to his last sad disaster.

The Spaniards were congratulating themselves on the approaching termination of a swift and prosperous voyage, for they had now nearly reached the harbour of Cadiz, little thinking that a British squadron, under the command of Sir John Jervis, afterwards created Earl St. Vincent, was there snugly lying ready to intercept them. On the morning of the 26th April, 1797, two frigates, belonging to that squadron, viz. the Emerald and Irresistible, got their eye upon the Spaniards, and instantly gave chase. In a few hours they approached each other within pistol-shot, and anxiously prepared for action. No man can tell in what state the feelings of Thomas Muir were at that awful period. To fight against his own country under other circumstances would have been rank treason, and we would without hesitation have placed his name in the blackest catalogue of traitors. But we are fortunately relieved from all anxiety on this delicate and painful point, by the consideration that Mr. Muir, *de facto*, did not take up arms against his own country in the sense in which such an act could alone be held criminal. He was compelled, from the very nature of his situation, and from dire necessity, to act in his own defence in the manner he appears to have done. And what man, under these most especial circumstances, would hesitate for one moment to defend his liberty and his life?

The action was fierce and bloody. It lasted for two hours

—and towards the close of it, Mr. Muir was struck with a cannon ball, and lay prostrate with the dead. The Spaniards were vanquished. The following is an interesting account of the action, taken from the letter of a British officer to his friends in Scotland, and published at the time in the newspapers:

"His Majesty's Ship Irresistible,
At Anchor, off Cadiz, 28th April, 1797.

"On the 26th inst. lying off here, saw two strange ships standing for the harbour,—made sail after them with the Emerald frigate in company; and, after a chase of eight hours they got an anchor in one of their own ports,—in Canille Bay. We brought them to action at two in the afternoon. We anchored abreast of them—one mile from the shore, and continued a glorious action till four, when the Spanish colours were struck on board, and on shore, and under their own towns and harbours. Our opponents were two of the finest frigates in the Spanish service, and two of the richest ships taken during this war. A Viceroy and his suite, and a number of general officers, were on board of one of them. I am sorry to say that after they struck, the finest frigate ran on shore. We, however, got her off at 12 at night, but from the shot she received she sunk at 3 in the morning, with all her riches, which was a sore sight to me, especially as I had been on board her. We arrived here with our other prize, and are landing our prisoners. *Among the sufferers on the Spanish side is Mr. Thomas Muir, who made so wonderful an escape from Botany Bay to the Havannah. He was one of five killed on board the Nymph, by the last shot fired by us. The officer at whose side he fell, is now at my hand, and says he behaved with courage to the last.*"*

But see what follows:—When the action was over some of the officers and crew of the Irresistible boarded the frigate in which Mr. Muir was, to take possession of her as their prize. On looking at the dead and dying, one of our officers was struck at the unusual position in which one of them lay. His hands were clasped in an attitude of prayer, with a small book enclosed in them. His face presented a horrid spectacle, as one of his eyes was literally knocked out, and carried away, with the bone and lower part of the cheek, and the blood about him was deep. Some of the sailors believing him to be

* Vide Edinburgh Advertiser, June, 1797, p. 349.

dead, were now in the act of lifting him up to throw him overboard, when he uttered a deep sigh, and the book fell from his hands. The officer to whom we have alluded snatched it up, and on glancing at the first page of it, he found it was the Bible, with the name of Thomas Muir written upon it. He was struck with astonishment. Thomas Muir was his early schoolfellow and companion! He had heard of some part of his subsequent history. But to find him now in this deplorable situation was almost incredible and heart-rending.

Without breathing his name, for that might have injured or betrayed his unhappy friend and countryman, who might yet perchance survive, the officer took out his handkerchief and wiped the gore from the mangled face of Mr. Muir. With another handkerchief he tied up his head, and after performing these kind and Christian offices, he enjoined the sailors to carry him gently on board a small skiff which was then lying at the side of the frigate to receive such of the Spaniards as had been wounded in the action, regarding whom an order had previously been issued by the British Commander, to send them ashore—or land them on their own territories, scarcely a mile distant.

After making this extraordinary and providential escape, Mr. Muir was carried to the Hospital at Cadiz as a Spanish sailor mortally wounded. In about two months—suffering all the while extreme agony, he was able to speak a little to those around him. Through some means or other, his distressing situation was communicated to the French Directory at Paris—and so much did they feel interested about Mr. Muir, (who, it will be recollected, was formerly in Paris,) that they sent a special messenger to Cadiz with instructions to see that every proper respect and attention was paid to him. The French Directory also ordered their agent at Cadiz to defray the whole expenses that might be incurred by Mr. Muir, and to supply him with any money he required.

Some of our readers we are afraid will now be greatly startled and displeased to learn that Mr. Muir now held direct and personal communication with Thomas Paine, whose works it is said created so much mischief. But we entreat them to observe that Mr. Muir by no means approved of the whole of Mr. Paine's works. Most certainly he never approved of his religious works. And we may as soon condemn the wise and virtuous men of former times for corresponding with Bolingbroke or Hume, as condemn Mr. Muir

for corresponding with Paine. Moreover, Mr. Paine, if we mistake not, was at that time a distinguished member of the French National Convention, and might have been serviceable to Mr. Muir in many ways. At any rate, we have only been able to discover one single letter between them, and we hope we will be excused for republishing it in this place when we explain that it simply describes the situation of Mr. Muir, and the state of his feelings, at the time it was written.

"Cadiz, Aug. 14, 1797.

"DEAR FRIEND,—Since the memorable evening on which I took leave of you at ——, my melancholy and agitated life has been a continued series of extraordinary events. I hope to meet you again in a few months.

"Contrary to my expectation, I am at last nearly cured of my numerous wounds. The Directory have shown me great kindness. Their solicitude for an unfortunate being who has been so cruelly oppressed, is a balm of consolation which revives my drooping spirits. The Spaniards detain me as a prisoner because I am a Scotchman. But I have no doubt that the intervention of the Directory of the Great Republic will obtain my liberty. Remember me most affectionately to all my friends, who are the friends of liberty and of mankind. I remain, dear Sir, yours ever,

"THOS. MUIR."*

In September following, while he was still at Cadiz, Mr. Muir had the honour to receive a communication, of rare example, either in ancient or modern times, and of which we think the greatest statesman, or warrior, that ever lived, might justly be proud. This was no other than a communication from the Government of France—not only offering to confer upon him the privileges of a free citizen, but urgently and generously inviting him to spend the remainder of his days in the bosom of the French nation. To an oppressed and persecuted individual—driven from his own country—and only known for his exertions and sufferings in the cause of truth, —we will say of liberty; such an invitation, coming as it did from one of the first Nations of Europe, was gratifying in the highest degree to Mr. Muir, and it is almost unnecessary to add that he accepted it as the greatest compliment and reward which could be paid to him in this world.

* Vide Edinburgh Advertiser, 1797.

The French Directory instantly followed up their invitation, by making a formal demand on the Government of Spain to restore Mr. Muir to his freedom, and to afford him every facility on his journey to France, which they readily did. On the 16th of September, 1797, he became once more a free man,—the sentence of the High Court of Justiciary always excepted. It never was recalled, but he was now beyond its reach, and heartily despised it.

He arrived at Bourdeaux, the first town of consequence on his entrance into France, early in December. The municipal authorities, as well as the whole body of inhabitants, received him with every demonstration of honour and kindness. They invited him to a public dinner, at which the Mayor of Bourdeaux presided, on the 4th of December, 1797. His health was drank with acclamation by a company of upwards of 500 individuals, as the "Brave Scottish Advocate of Liberty—and now the adopted Citizen of France." And when he rose to return thanks—for he could speak French fluently, he fainted in the arms of the American Consul, who did him the honour to sit at his left hand—a circumstance which told the state of his feelings, and spoke more powerfully in his behalf than the most animated and brilliant harangue he could have made.

He reached Paris by slow and easy stages, on the 4th of February, 1798; and on the 6th of that month he thus wrote to the French Directory:

"Citizen Directors,—I arrived two days ago at Paris, in a very weak and sickly state.

"Permit me to express to you the entire devotion and gratitude of my heart.

"To you I owe my liberty. To you I also owe my life. But there are other considerations of infinitely superior importance, and which ought to make a forcible impression on my mind.

"Your energetic conduct has saved the liberty, not only of France, but also of my country, and of every other nation in the world, at present groaning under oppression.

"It is unnecessary for me to make protestations of my love and veneration for the Republic. To my last breath I will remain faithful to my adopted country.

"I shall esteem, Citizen Directors, the day on which I shall have the honour to be admitted to your presence, the most precious of my life; and if I have passed through dangers and

misfortunes, that moment will for ever efface their remembrance, and amply compensate them.

"I have the honour to be,

"CITIZEN DIRECTORS,

"With the most profound respect,

"Your grateful and devoted servant,

"THOMAS MUIR."*

A deputation from the French Government immediately waited on Mr. Muir, to congratulate him on his arrival in Paris. His company was now courted by the highest circles in France; and indeed he acquired the sympathy and esteem of all classes in that great community. Nothing was wanting on their part to make him happy—and of this, the grateful homage of his heart fully showed that he was deeply sensible. But his constitution was fast sinking. The wounds he had received were found to be incurable—and shortly afterwards, viz. on 27th of September 1798, he expired at Chantilly, near Paris, and was interred there, by the Public Authorities, with every possible respect.

His venerable parents, who had heard of his escape from Sydney, and subsequent history, were, as may well be imagined, greatly agitated by fresh hopes and fears on his account.—Many an anxious thought they must have had about him.—They received several letters from him, all breathing the most dutiful and affectionate regard. On his deathbed he carefully sealed up the Bible which they had given him on his departure from Scotland, and which had been so miraculously preserved by him, through all the difficulties and dangers he had encountered, leaving an injunction that it should be forwarded to his parents by the first opportunity; and it was so forwarded, and received by them with mingled feelings of satisfaction and grief. They only survived him about two years.

We believe the only direct relations of Mr. Muir now living, are his niece, the amiable lady of the Rev. Laurence Lockhart, minister of Inchinnan, and his highly respectable nephews, David Blair, Esq. and Captain Thomas Blair, of the H. E. I. C. service, who we understand both imbibe the noble sentiments of their uncle.

* Vide Edinburgh Advertiser, 1798.

READER!—You thus see, that at the early age of 33, an amiable and accomplished man was cut off, who was rising to eminence in his profession, and might have become one of the ornaments of his country.

Peruse his Trial, we beseech you, and you will find that he was PUNISHED, aye, most cruelly punished, because he presumed to advocate those liberal sentiments which are now uttered throughout these kingdoms, and which are engrafted on the hearts of every good and loyal subject.

His defence, powerful and eloquent as it is, and worthy of all praise, did not satisfy the consciences of his Judges. We hope it will satisfy yours.

But whether it does so or not, we think you will admit, that his moral character stands out to view in the fairest and most enviable form. Even the most rancorous of his political enemies have not presumed to asperse it.

We are sensible that we have not been able to do any thing like justice to his merits; and indeed, the consciousness of our own utter insignificance and inability, should perhaps have deterred us from venturing upon such a task at all. But we beg leave to state (with all humility), that we have been prompted to undertake it from a pure love of justice.—We have nothing to hope, or fear from it. Stop! we must qualify this expression—and should say, that since we have meddled with a subject somewhat of a *political* nature, we shall possibly be landed "in a sea of troubles." We were not born at the date of these transactions.—We are not acquainted with a single relative of Mr. Muir's—all our information has been derived from what we consider correct and authentic sources. At the same time, we may be mistaken in regard to one or two minor particulars.—We know we have disclosed, both here and in the Appendix, a few striking and melancholy truths, which must be disagreeable in certain quarters, and especially to the stomachs of a few Old Tories —"the life and fortune men" of former times, whose ranks have greatly thinned of late. But, independent of them, we are much afraid that there is still too much bigotry, intolerance, and prejudice in the land, to make us feel altogether easy. Yet, nevertheless, though young and humble, we will yield to no man for independent political principles; and if we are at all encouraged in this undertaking, we shall perhaps be tempted to try our hand soon again on a few other *Political Trials*, equally extraordinary, and interesting. De-

pend upon it we will not mince matters, or flinch from our duty, in giving them a thorough exposition.

At present, our object is to do all that in us lies, to rescue the memory of a good man from oblivion.

In the case of the ever-to-be-remembered *Algernon Sydney*, we find, that the tyrannical sentence pronounced against him, in the reign of Charles II. was afterwards *Reversed*, by a special Act of Parliament, because, as the preamble of the Act states, he was convicted "BY MEANS OF AN UNLAWFUL RETURN OF JURORS, AND BY DENIAL OF HIS LAWFUL CHALLENGES."

Is it, then, too much for us to expect, that in this enlightened age, the sentence against Thomas Muir will speedily be *Reversed*, on precisely similar grounds?

He made, you will find, a solemn and affecting Appeal to Posterity; and the time, we hope, has now arrived, when that Appeal may safely be heard.

We see that MONUMENTS have been erected in "Modern Athens," to commemorate the names of a DUNDAS and a MELVILLE, because, we presume, they were the greatest *placemen* and *pensioners* that this country could boast of. But strange to say, no monument has yet been erected in Scotland, to commemorate the name of one single Reformer, or rather one single Advocate of Civil Liberty!

Shall this glaring omission,—this national reproach,—remain in our country much longer? The victory of the Reformers is at hand. The great truths of civil and religious liberty are everywhere triumphant. And shall THOMAS MUIR, the firm and undaunted Patriot, the conscientious Martyr, to PRINCIPLES now freely borne abroad, in the SENATE, in the COURT, and in the FORUM—shall he, we ask, be FORGOTTEN by his countrymen, to whom he has left so touching, so noble an example? No! We feel that the period approaches when JUSTICE will indeed be done to this eminent high-minded man, and his band of compatriots; and we confidently anticipate that we shall soon see this his native city adorned with a MONUMENT to his memory. But if these, our fondest hopes, shall not be realized—if this our humble but earnest appeal in his behalf, shall only be made in vain—if no kindly heart shall respond to our call—if men shall merely cry Reform! and Liberty! with their mouths, while their hearts are cold—narrow—and contracted; or utterly insensible to the loftier springs of action:—if they of this generation shall basely forget the man who fought the first and bravest battle for them, we shall indeed be greatly grieved—but, thank God, we shall not be

dismayed. We look to higher prospects. Yes, we have the great satisfaction to think, that whatever the men of this world may say or do, a day is fast approaching, when Thomas Muir will again meet with his friends and his foes—with his Judges and his Jury—face to face—at a Bar where the hearts of all men shall be laid open—where Tyranny shall be deprived of its iron rod—and where white robed Justice shall sit OMNIPOTENT, to avenge the wrongs of the oppressed, and to bind up the wounds of the broken-hearted!

# APPENDIX.

## No. I.

## THE TRIAL

OF

## THOMAS MUIR, ESQ. ADVOCATE,

YOUNGER OF HUNTERSHILL.

THE HIGH COURT of JUSTICIARY met at Edinburgh, on Friday, the 30th August, 1793.

*Judges present,*

The LORD JUSTICE CLERK, M'QUEEN.

Lords HENDERLAND, DUNSINNAN, | Lords SWINTON, ABERCROMBY.

Mr. Muir appeared at the Bar, and the Clerk of Court was ordered to read the following Indictment against him:

GEORGE the THIRD, &c. Whereas it is humbly meant and complained to us by our right trusty ROBERT DUNDAS, Esq. of Arniston, our Advocate for our interest, upon THOMAS MUIR, younger of Huntershill, That, by the laws of this and every other well governed realm, the wickedly and feloniously exciting, by means of Seditious speeches and harangues, a spirit of disloyalty and disaffection to the King and the established Government, more especially, when such speeches and harangues are addressed to meetings or convocations of persons brought together by no lawful authority, and uttered by one who is the chief instrument of calling together such meetings: As also, the wickedly and feloniously advising and exhorting persons to purchase and peruse seditious and wicked publications and writings, calculated to produce a spirit of disloyalty and disaffection to the King and Government: As also, the wickedly and feloniously distributing, or circulating any seditious writing or publication, of the tendency aforesaid, or the causing distribute or circulate any such seditious writing or publication: As also the wickedly and feloniously producing and reading aloud in a public meeting or convocation of persons, a seditious and inflammatory writing, tending to produce in the minds of the people a spirit of insurrection and of opposition to the established Government: And the publicly approving of, and recommending in said meeting, such seditious and inflammatory writing, are all and each, or one or other of them, crimes of an heinous nature, dangerous to the public peace, and severely punishable: Yet true it is, and of verity, That the said Thomas Muir is guilty actor, or art and part, of all and each, or one or other of the said crimes aggravated

as aforesaid: In so far as, on the third day of November 1792, or one or other of the days of that month, or of the month of October immediately preceding, or of December immediately following, the said Thomas Muir having been present at a meeting, in the town of Kirkintilloch, parish of Kirkintilloch, and county of Dunbarton, denominated "A Society for Reform," or bearing some such name; and also having, some time during the course of the said month of November aforesaid, been present at another meeting at Milltoun, parish of Campsie, and county of Stirling, which meeting was also denominated, "A Society for Reform," or bore some such name, and both of which societies above-mentioned, the said Thomas Muir was the chief means of instituting and forming; he did, at times and places foresaid, with a wicked and seditious intention, address and harangue the said meetings; in which speeches and harangues, the said Thomas Muir did seditiously endeavour to represent the Government of this country as oppressive and tyrannical, and the Legislative Body of the State as venal and corrupt, particularly by instituting a comparison between the pretended existing Government of France, and the Constitution of Great Britain, with respect to the expenses necessary for carrying on the functions of Government; he endeavoured to vilify the monarchial part of the Constitution, and to represent it as useless, cumbersome, and expensive: At least, the said Thomas Muir did use words and arguments of the above seditious tendency and import. Further, the said Thomas Muir did, sometime during the course of September, October, or November 1792, at Glasgow, Kirkintilloch, Milltoun, &c. and elsewhere, wickedly and feloniously, exhort and advise several persons to purchase and peruse various seditious pamphlets or writings; particularly, the said Thomas Muir did, some time in the months aforesaid, within his father's house at Glasgow, aforesaid, or some other place to the public prosecutor unknown, wickedly and feloniously advise John Muir senior, late hatter in Glasgow, Thomas Wilson, barber there, and John Barclay, residing in the parish of Calder, to read Paine's Rights of Man, and to purchase the same; which book or pamphlet entituled, Paine's Rights of Man, is a most wicked and seditious publication, calculated to vilify the Constitution of this country, to produce a spirit of insurrection among the people, and to stir them up to acts of outrage and opposition to the established Government. Further, the said Thomas Muir did, in the course of the months of September, October, or November aforesaid, wickedly and feloniously distribute and circulate, or cause to be distributed and circulated, in the towns of Glasgow, Kirkintilloch, and Milltoun aforesaid, &c. a number of seditious and inflammatory writings or pamphlets; particularly a book or pamphlet, entitled, "The Works of Thomas Paine, Esq." Also, a writing or publication, entitled, "A Declaration of Rights, and an Address to the People, approved of by a number of the Friends of Reform in Paisley;" also, a paper or publication, entitled, "A Dialogue betwixt the Governors and the Governed;" also, a paper or publication, entitled, "The Patriot:" Particularly, the said Thomas Muir did, some time in the month of October, or of November aforesaid,

at Kirkintilloch aforesaid, or at some other place to the public prosecutor unknown, wickedly, and feloniously deliver and put into the hands of Henry Freeland, weaver in Kirkintilloch, a seditious book or pamphlet, entitled, "The Works of Thomas Paine, Esq." (which the said Henry Freeland carried away with him;)—which book or pamphlet, along with the other wicked, seditious, and inflammatory passages, contains *inter alia* the following:—

*From Paine's Works.*

Part I. page 13.—"Monarchy is ranked in scripture as one of the sins of the Jews, for which a curse in reserve is denounced against them."

P. 20.—"Why is the Constitution of England sickly, but because Monarchy hath poisoned the Republic? The Crown hath engrossed the Commons.

"In England, a King hath little more to do than to make war, and to give away places; which, in plain terms, is to impoverish the nation, and set it together by the ears."

P. 78.—"What are the present governments in Europe, but a scene of iniquity and oppression? What is that of England? Do not its own inhabitants say it is a market where every man has his price, and where corruption is common traffic?"

P. 54.—"The attention of the Government of England appears, since its political connexion with Germany, to have been so completely engrossed and absorbed by foreign affairs, and the means of raising taxes, that it seems to exist for no other purposes. Domestic concerns are neglected; and with respect to regular law, there is scarcely such a thing."

And the said Thomas Muir did, some time in October or November aforesaid, within his own or his father's house at Huntershill, &c., or at some other place to the Public Prosecutor unknown, wickedly and feloniously put into the hands of William Muir, weaver in Kirkintilloch, eleven numbers of a seditious book or pamphlet, entituled, "The Patriot," which the said William Muir carried away with him, and kept possession of; and which book or pamphlet contained among others the following seditious passages:

*From the Patriot.*

No. V. page 168 and 169.—"They have lost the distinguishing character between freemen and slaves; they have lost the distinguishing character of Englishmen! They have lost what the most tyrannical Kings of England could never force from them! They have in a great measure lost what their forefathers spent their blood and treasure to defend—the greatest jewel that any people can possess—their constitutional and natural liberty—their birthright and inheritance derived from GOD and Nature! They have lost the constitutional means of redress for all their grievances!—What is it, indeed, they have not lost by that hated septennial law, which has fettered down the elective power of the people, like a dog to a manger, who is only suffered to go abroad once in seven years for an airing!"

No. VI. pp. 184 and 185.—"Rouse then ye Britons! Awake from

the slumbering state of apathy in which you have so long suffered yourselves ingloriously to remain? Open your eyes to the injuries which have been heaped on you; and assert your right to have them redressed. Evince to all the world that you are the true descendants and sons of your once famed glorious ancestors; prove yourselves worthy to inherit in its highest degree of perfection, that Constitution which they raised by their valour and cemented by their blood. Raise your voice—The voice of the people—and sound in the ears of tyrants and their abettors, that you will be free, and you are so: That voice is the noble, the mighty fiat, which none can, or dare to, attempt to gainsay."

No. XI. p. 375.—"And what would the Earl of Chatham have thought, if he had lived to hear people now talk of a happy and glorious Constitution, evidently built upon corruption, and supported by peculation!"

P. 419.—"We may easily trace the means by which our nobility are at this moment not only in possession of one branch of the Legislature by hereditary claim, but by which they have also monopolized, with the addition of a few rich commoners, the majority of voices in the House of Commons, which, shame to tell, is barefacedly called the Representation of the People. This we pledge ourselves to prove to the satisfaction of our readers in the course of this work."

And the said paper or publication, entituled, "A declaration of Rights, and Address to the People, approved of by a number of the Friends of Reform in Paisley," distributed and circulated as aforesaid, contained the following passages:

P. 4.—"1. Being subject to the legislation of persons, whom other men have placed over you, it is evident you are denied that which is the right of every one, and without which none are free. For to be *enslaved*, is to have no will of your own in the choice of those law makers, which have power over your properties, your families, your lives, and liberties. Those who have no votes for electing Representatives are not free, as the rights of nature, and the principles of our Constitution, require, but are enslaved to the Representatives of those who have votes."

P. 5.—"3. Should you not associate in your own cause and with one voice? the voice of united millions demand reform in the national representation."

P. 15.—"But the evils of long Parliaments—are they not written in tears and in blood? And have they left us aught of liberty but the name? With the poor exception, then, of one year of freedom in *seven*, and that in favour of not one-seventh part of the nation, it is demonstrated that you are constantly taxed without being represented, and compelled to obey laws to which you never gave assent. Are not these the very definitions of slavery? And, are you not thus degraded to a level with the very cattle in the field, and the sheep in the fold; which are a property to those who rule over them, and have no power to say, why are we bought and sold? why are we yoked and laden with heavy burdens? why are we fleeced and led to the slaughter?

Demand then, with one voice, friends and countrymen, that share in making your own laws to which, by the constitution and the laws of nature, you are entitled; call for the Bill which would restore your lost constitution, and recover your stolen rights. Pursue the only course which can ever effect any considerable reduction of debts and taxes, or materially advance the interest of manufactures and commerce. In short, be free, prosperous, and happy; and give your posterity the same cause to revere your memories, as you have to bless those progenitors who left you an inheritance in a free constitution."

And the above writing or publication, entitled, "A Dialogue between the Governors and the Governed," distributed and circulated as aforesaid, contained, among others, the following passage:—

"*Civil Governors.*—The law enacts that ye be submissive.

"*People.*—The law is the general will, a new order.

"*Civil Governors.*—You will be a rebellious people.

"*People.*—Nations cannot revolt; tyrants are the only rebels.

"*Civil Governors.*—The King is with us, and he commands you to submit.

"*People.*—The Kingly office originates in the people, who elect one of themselves to execute it for the general good. Kings, therefore, are essentially indivisible from their nations. The King of ours, then, *cannot* be with you; you only possess his phantom. And the Military Governors, stepping forward, said, "The people are timid; let us menace them; they only obey force—Soldiers, chastise this insolent rabble."

"*People.*—Soldiers, you are of our own blood!—Will you strike your brothers? If the people perish, who will maintain the army? And the soldiers, grounding their arms, said to their chiefs, We, also, are the people, we are the enemies of ——." "Whereupon the *Ecclesiastical Governors* said—"There is now but one resource left. The people are superstitious; we must frighten them with the name of God and of Religion. Our dearly beloved brethren, our children! God has appointed us to govern you."

"*People.*—Produce to us your heavenly powers.

"*Priests.*—You must have faith. Reason will lead you astray.

"*People.*—Do you govern, then, without reason?

"*Priests.*—God ordains peace. Religion prescribes obedience.

"*People.*—Peace presupposes justice. Obedience has a right to know the law it bows to.

"*Priests.*—Man is only born into this world to suffer.

"*People.*—Do *you*, then, set us the example.

"*Priests.*—Will you live without God and without Kings?

"*People.*—We will live without tyrants, without impostors."

Further, the said Thomas Muir having, upon the 11th, 12th, or 13th days of December, 1792, or one or other of the days of that month, been present at a meeting calling itself 'The Convention of Delegates of the Associated Friends of the People,' or assuming some such name; which meeting was held in a room commonly called Laurie's room, in James's court, in the city of Edinburgh, he did then

and there, with a wicked and seditious design, produce, and read aloud to the said meeting, a writing or paper, entitled, "Address from the Society of United Irishmen in Dublin to the Delegates for promoting a Reform in Scotland."* Which writing or paper was of a most inflammatory nature and seditious tendency, and the said Thomas Muir did, immediately thereafter, wickedly and feloniously propose that it should be received, and lie on the table of the said meeting; and did also move, that the thanks of the meeting, or some acknowledgment, should be returned to those from whom the foresaid paper or address came. And moreover, the said Thomas Muir did, then and there, wickedly and feloniously express his approbation of the sentiments contained in the said paper or address, or at least, did declare, that it was altogether harmless; or used words and expressions of a similar import. And he having been brought before John Pringle, Esq.† our Sheriff-depute of the county of Edinburgh, upon the 2d of January, 1793, did, in his presence, emit and sign a declaration; but immediately thereafter, the said Thomas Muir, conscious of his guilt in the premises, did, in order to evade punishment, abscond and leave the kingdom; and was fugitate or outlawed. That having lately, in a private and clandestine manner, come into this country, by way of Ireland, he was discovered and apprehended, and at the same time, sundry papers found in his possession were, together with his pocket-book, sealed up in presence of William Ross, Esq. one of our Justices of Peace for the shire of Wigton, and will be used in evidence against him. The indictment then concludes as follows: At least, times and places above-mentioned, the said seditious speeches and harangues were uttered, the said seditious books or pamphlets recommended to be purchased and perused, the said seditious books or pamphlets circulated and distributed, as aforesaid, and the said wicked and inflammatory address produced, read, recommended, and approved of, in manner above-mentioned; and the said Thomas Muir is guilty actor, or art and part, of all and each, or one or other of the foresaid crimes. All which, or part thereof, being found proven by the verdict of an assize, before our Lords Commissioners of Justiciary, in a Court of Justiciary to be holden by them within the Criminal Court-house of Edinburgh, the said Thomas Muir ought to be punished with the pains of law, to deter others from committing the like crimes in all time coming.

To this INDICTMENT Mr. Muir pled NOT GUILTY.

*Lord Justice Clerk.* "Who is your Counsel?"

*Mr. Muir.* "I am to be my own Counsel."‡

* Vide extract from it, p. 8, of Life.

† Afterwards created a principal clerk of Session, and of King's Processes.

‡ His friend the Honourable Henry Erskine, we believe, offered to conduct his defence—but for particular reasons Mr. Muir declined. Let it be known that even Henry Erskine—the man who shed such lustre on the Scottish Bar, was actually driven from his situation as Dean of the Faculty of Advocates, because he was a Reformer, and had the audacity to remain "honest in the worst of times!!!" After this, talk not of the servility of the Writers to the Signet. The servility of the Faculty of Advocates, in those days, was many degrees worse. We have our eye upon them, and if no one else does it, we shall publish their names, and shew the *Titles* and *Pensions* that some of them received.

*Lord Justice Clerk.* "Have you any thing to state just now in your defence, or on the relevancy of the Libel?"

*Mr. Muir.* "I have nothing to state till the witnesses are examined, when I shall have an opportunity of addressing the Jury. I consider the Jury as judges both of the law and the fact. I have already stated in writing the nature of the proof I mean to offer in exculpation."

(In point of form it is required in Scotland that the person accused should communicate to the prosecutor through the Clerk of Court, on the evening preceding the trial, the substance of his defence in writing, accompanied with a list of the witnesses he intends to adduce in support of such defence. Mr. Muir had complied with this rule.)

The Clerk of Court therefore now read the following

DEFENCES *for* THOMAS MUIR.

"The Criminal Libel is false and injurious.

"So far from exciting the People to riot and insurrection, it can easily be proved, by a numerous list of witnesses, that upon every occasion, the Pannel exhorted them to pursue measures moderate—legal—peaceable—and constitutional.

"The charge of distributing seditious publications, and of advising the people to read them, is equally false and calumnious.

"The Pannel *admits that on the great national question, concerning an equal Representation of the People in the House of Commons, he exerted every effort to procure in that House, a full, fair, and equal Representation of the People, as he considered it to be a measure (and still does) the most salutary for the interest of his country.*

"But the Pannel offers to prove, that, as he considered the information of the people to be the chief thing requisite to accomplish this great object, he uniformly advised them to read every publication, upon either side, which the important question of Parliamentary Reform had occasioned. (Signed) "THOMAS MUIR."

*Lord Justice Clerk.* "Have you any thing further to state in support of your defence?"

*Mr. Muir.* "My Lords, I have nothing further to state at present. I reserve myself till I come before a Jury of my country. I again admit that I have done every thing in my power to promote Parliamentary Reform. If that be sedition, I at once plead Guilty to the charge. I also admit, that I advised the people to read books of all kinds, not this book, nor that book, but books on either side, which would tend to inform their minds, on the great and important national question which gave rise to their Association, nor shall I hesitate to declare my motives.—My Lords, I consider the ignorance of the people to be the source from which despotism flows. I am also of opinion that an *ignorant* people, impressed with a sense of grievances, and demanding redress, are exposed to much misery, and perhaps to ultimate ruin. Reformation ought always to be preceded by knowledge; and who will say, that mankind should be precluded from that information, which concerns them so materially?

*Lord Justice Clerk.* "Do you mean to rest your defence on what is stated in this paper? If you have any other facts to prove, it will

be necessary for you to state them now, before the Jury is impannelled, as they will not be admitted afterwards."

*Mr. Muir.* "I offer to prove by thousands of witnesses, that so far from recommending 'seditious practices,' I have uniformly advised the people to follow none but peaceable, orderly, and constitutional measures. And, finally, that I exhorted them to connect knowledge with liberty, and both with morality. If these be crimes, then I am Guilty."

Their Lordships now proceeded to give their opinions on the relevancy of the Indictment.

*Lord Henderland.* The charge against the Pannel is for a crime of the most dangerous tendency. The Pannel, too, is a person belonging to the Faculty of Advocates, who, his Lordship presumed, must have received such an education, as might have instructed him in the laws and constitution of his country. It is most extraordinary that such a person should wickedly, and feloniously, harangue ignorant country people, and circulate seditious publications. These practices could have no other tendency, than to excite a spirit of discontent against the King and Government of this realm, and to introduce levelling principles, which the Pannel must have known, from the history of his country, had occasioned so much blood more than a century ago. Can the Pannel have turned his eyes to the melancholy state of a neighbouring nation, to the scenes of blood and devastations in France, where the grossest oppression existed under the pretended name of liberty and equality? His Lordship sincerely hoped that the gentleman would be able to exculpate himself, but we are obliged to hold the Indictment true, and which, if proven, must infer every thing short of capital punishment.

*Lord Swinton.* His Lordship did not believe, that in the memory of man there had ever been a libel of a more dangerous tendency read in that Court. There was hardly a line of it which, in his opinion, did not amount to *High Treason.*

*Lords Dunsinnan* and *Abercrombie* coincided in opinion as to the dangerous tendency of the crime charged; and, if proven, the highest punishment should be awarded against the Pannel.

*The Lord Justice Clerk.* The crime charged is Sedition—and that crime is aggravated according to its tendency. The tendency here is plainly to overturn our present happy Constitution—the happiest, the best, and the most noble Constitution in the world; and I do not believe it possible to make it better. The books which this gentleman has circulated, have a tendency to make the people believe that the Government of this country is venal and corrupt, and thereby to excite a rebellion. His Lordship agreed to find the libel relevant to infer the pains of law.

An Interlocutor to that effect was accordingly pronounced.

*The Lord Justice Clerk* now proceeded to name the Jury, and called SIR JAMES FOWLIS, of Collington, and CAPTAIN JOHN INGLIS, of Auchlindiny.

*Captain Inglis,* on answering to his name, rose and stated, that

being in his Majesty's service, he did not wish to be on this Jury, as he thought it unfair, in a case of this nature, to try Mr. Muir by servants of the Crown.

*The Court* informed Captain Inglis, that there was no impropriety in his being a Juryman, although belonging to the service of Government.

*The Lord Justice Clerk*, after having selected the first five Jurymen, asked Mr. Muir if he had any objection to them?

*Mr. Muir.* "My Lords, of these five gentlemen I have no personal knowledge. I believe their situations in life are respectable; and that they are men of probity and honour. But my situation and theirs is so peculiar, that I am obliged to object to their being upon this Jury. My Lords, you know that the question of Parliamentary Reform has agitated deeply the minds of men in this country; different opinions have been adopted, and different parties have been formed. The gentlemen now selected by your Lordship, as my Jurymen, belonged, at that moment, to an Association which assembled in Goldsmiths' Hall, calling themselves the Friends of the Constitution, united to support it against what they were pleased to call 'republicans and levellers,' and expressing their zeal to suppress 'tumult and sedition.' My Lords, I belong to the association of the 'Friends of the People.' Viewing a reform in the representation, as a measure conducive to the stability of the Constitution and to the felicity of the people, we united our common exertions, by legal measures, to accomplish that object.

"My Lords, to the Constitution, in its genuine principles, we, the friends of the people, have solemnly pledged ourselves. Never have we professed to be its enemies; yet the Association in Goldsmiths' Hall, by a deliberate and public act, have declared that we were the *enemies* of the Constitution. Nay, that Association has denounced us to the country as attempting to kindle the torch of civil war, and to lay it in blood and destruction! The fact, upon which I found this charge, is notorious, and cannot be denied. A Convention of delegates, from all the Societies of the Friends of the People in Scotland, assembled in this city on the 11th day of December last. Of this Convention I had the honour of being a member. The Convention accorded with the Association in Goldsmiths' Hall, in their zeal to support the Constitution, in their abhorrence of sedition, and in their determination to concur with good citizens in the suppression of riot and tumult. And to testify their principles and their object, the Convention ordered a number of its members to repair to Goldsmiths' Hall, and to subscribe the declaration there lying of adherence to the Constitution. In this number I was included. We did so—and what were the consequences? Why, the Association erased our names, and published their proceeding in the Papers of the day! Was not this an act of public proscription against us all? Accused this day of sedition,—of an attempt to overthrow the Constitution, shall those men be my Jurymen, who have not merely

accused me, but likewise judged and condemned me, without knowing me,—without hearing me in my vindication? My Lords, this trial is no trivial matter. It affects me; but it affects the country more. The noise of it will pass down to other times, and posterity may fancy their most valuable rights connected with its consequences.

"But, my Lords, this is not the only objection I state to the gentlemen of Goldsmiths' Hall being of my Jury. I am accused of circulating the works of Mr. Paine. That Association has publicly advertised their horrors at the doctrines contained in these works. Nay, more, they have offered a reward of five guineas to any one who will discover a person who may have circulated them! If this is not prejudicating my cause, I demand to know what prejudication is? Upon these two objections I shall make no farther observations. To suppose them not well founded, would be to insult the common sense and feelings of mankind.

"My Lords, I demand justice.—Let me be tried fairly,—not by a Jury of the Association of Goldsmiths' Hall,—not by a Jury of the Association of the Friends of the People, but by men unconnected with either, and whose minds are not warped with prejudices. I, therefore, solemnly protest that no person, who is a member of the Association in Goldsmiths' Hall, can sit as a Juryman on my trial."

*Solicitor General Blair* replied, that he considered this objection to be of the most extraordinary nature. The pannel is accused of forming associations contrary to the Constitution, and he presumes to object to those gentlemen who formed associations in its defence. With equal propriety might the pannel object to their Lordships on the Bench, to be his Judges in this trial, for their Lordships had sworn to defend the Constitution.

*Mr. Muir.*—"This day I will not descend into the quibbles of a lawyer. I object to these gentlemen, not because they associated in defence of the Constitution. I too, as well as they, have associated in defence of the Constitution. But my objection is, that they by an act of theirs, have publicly accused me of being an enemy to the Constitution, and have virtually pronounced my condemnation."

*Lord Justice Clerk.*—"I can see nothing in the objection, and am clear for repelling it."

The objection was accordingly unanimously repelled by the Court. When the Jury were now all selected by the Court and sworn, Mr. Muir again rose and stated that he believed them to be men of truth and integrity, but he could not help recalling to their attention the peculiarity of their situation. They had already determined his fate, and as they valued their own reputation and eternal peace, he entreated——

Here Mr. Muir was interrupted by the Court, who concurred in opinion that his conduct was extremely improper in taking up their time, as the objection had already been repelled.

(We now publish the names of the Jury, and beg to render some of their designations a little more complete than they have yet been:)

Gilbert Innes of Stow, *Foreman.**
Sir James Fowlis of Collington.†
Capt. John Inglis of Auchindiny.‡
John Wauchope of Edmonstone.§
Andrew Wauchope of Niddry Marichal.‖
John Trotter of Mortonhall.¶
James Rochead of Inverleith.**
John Alves of Dalkeith.
Wm. Dalrymple, Merchant, Edinburgh.
Donald Smith, Banker, there.††
James Dickson, Bookseller, there.
George Kinnear, Banker, there.
Andrew Forbes, Merchant, there.
John Horner, Merchant, there.
John Balfour of Pilrig, *Clerk.*

The *Lord Advocate* now proceeded to call the following *evidence for the Crown.*

*Alex. Johnstone*, bleacher, Kincaid Printfield, Campsie.

*Mr. Muir* objected to this witness. He did not know him, and did not remember if he had ever seen him, but he offered to prove, by respectable witnesses, that this man had declared that he would do all that he could to get him (Mr. Muir) hanged.

*Solicitor General* replied, that if this objection were listened to, it would be in the power of any person to disqualify himself from being a witness in any cause.

*The Court* unanimously repelled the objection.

The witness being sworn, stated that he was present at a meeting in Kirkintilloch, in November last, known by the name of a Reform Society. Henry Freeland, weaver in Kirkintilloch, was president. Mr. Muir was there, and said he was happy to see so full a meeting; he mentioned the disadvantages under which this country laboured from an unequal representation of the people in Parliament; said that many places which contained great numbers of inhabitants were not represented at all; spoke of the Rotten Boroughs, and the small number of votes in such places—the influence of Lords—and that one

* Deputy Lieutenant for the County of Edinburgh, &c. &c. We observe this gentleman has lived to append his name to the late *anti*-reform petition in Edinburgh. He must now be nearly worn out in the service!—*See p.* 20.
† See Pension list of Scotland name "Fowlis."
‡ In the pay of Government.
§ Commissioner of Property Tax, Edinburgh.
‖ Commissioner of Property Tax, Edinburgh. *Par nobile fratrum!*
¶ One of the protogees of the late Lord Melville.
** Commissioner of Property Tax, Edinburgh.
†† Deputy Lieutenant, Edinburgh.
We have thus analyzed the *majority* of these gentlemen, and leave the rest in peace and quietness.

man in some places could make two Members of Parliament—that the Members of the British Parliament were often not the representatives of the people—that if a man threw away L.20,000, in making himself a Member of Parliament, he surely had some interest in it—that the Duke of Richmond had complained of this, but that L.30,000 had been put into his pocket to silence him. Mr. Muir also observed that the French would now, without a doubt, be successful—that they were more equally represented than the people of Britain, and their taxes less. Mr. Muir pointed out regulations for the Society; said they should be well acquainted with the principles of those they admitted into it: the sole intention of such societies was to obtain a more equal representation of the people, and a shorter duration of Parliaments—advised the meeting to publish their sentiments, to obtain political knowledge by corresponding with other Societies, and reading political books or pamphlets. The witness being *Interrogated* if Mr. Muir mentioned any particular book—answered, that he mentioned none in particular. *Interrogated* by the *Solicitor General*, if there was any thing said about the Royal family—No, nothing was said on that subject, except that they were to hold it legal to have a King: Nothing was said about the powers of the King, or the expenses which his Government might incur: Some person present inquired into the principles of the Society; and one near him said, that for his part he had no need of any explanation, as he had read Paine's Rights of Man: Did not know that Mr. Muir heard this conversation: The meeting was principally composed of Weavers, from 18 to 21 years of age: Mr. Muir did not join the meeting till after it was constituted: It was known that he would attend: He was considered the chief person at it: Mr. Muir recommended to the people, who intended to form themselves into Societies for Reform, to do so as soon as possible, in order that they might be able to communicate their sentiments to one another, and lay their Petitions before Parliament.

*Cross-examined* by Mr. Muir: Admitted that Mr. Muir recommended order and regularity, and told the meeting that any act of tumult would ruin their common cause, and that there was no other mode of procuring redress but by applying to Parliament: He also recommended to the meeting to beware of admitting immoral characters as members.

*Robert Weddel*, weaver in Kirkintilloch, was at a meeting at Kirkintilloch in November last—the object of which was to obtain Parliamentary Reform: It was called a meeting of the "Friends of the People:" Witness was vice-president of the meeting, and James Baird was secretary: Saw Mr. Muir after it was constituted, who made a speech about the inequality of representation: Mr. Muir was for King, Lords, and Commons: Said that the Society ought to petition the House of Commons, and proceed in a constitutional manner: Nothing was said about the expenses of the King, or the burden of taxes, or any comparison made between the Government of France and of this country: Did not recollect how long Mr. Muir spoke: Was at another meeting with him: The conversation

at this second meeting (in the house of W. Wallace, Kirkintilloch) was on different subjects,—relating to the news of the country,—and about books: There might be above eight individuals present; not one-fourth of the first meeting: Henry Freeland, president, and James Baird, secretary of the former meeting, were present at this one also: Flower's book on the French Constitution was mentioned in the course of the conversation: Witness never heard of that book before: Thinks it was Muir who mentioned the book, but cannot be positive: Paine's book was not spoken of at this meeting, but was at the former, where one Robert Boyd asked Mr. Muir's opinion of Paine, and Mr. Muir answered, that it was a book quite foreign to their purpose.

The *Lord Advocate* asked the witness what was said about Flower on the French Constitution?

*Mr. Muir* objected to the question: "My Lords, Mr. Flower's book contains no sedition; but although it had been of a most seditious and treasonable nature, yet the indictment is utterly silent about it. I am not here accused of recommending or circulating that book, and how, therefore, can any thing concerning it be now adduced in evidence against me? I plead upon a great principle of natural justice. I look forward to other times, and tremble for the precedent. If this were not the case I would say, not merely that I approved of Mr. Flower's book, which does honour to its enlightened author, but in this great audience, I would *recommend* its principles to every man who values his country."

*Lord Advocate.*—"The charge against the pannel is sedition, branched out under various heads. One is, advising people to purchase seditious books, and the prosecutor was entitled to examine as to such facts, though every particular book or fact was not condescended on in the libel."

*Mr. Muir* replied, that a charge in *criminal law* ought not to be general. Would it be fair in the Lord Advocate, if he, Mr. Muir, had been tried for robbery, to bring a proof that he was guilty of murder? He could have proved that Mr. Flower's book is no libel, or he might have brought evidence to prove that he never recommended or circulated it; but here an unfair advantage was taken of him; it was a secret trap, an engine laid to ensnare him.

*Lord Justice Clerk.*—By the statute of James the 6th, wherever "art and part," is libelled, there can be no objection to the generality. This is a proper question—and it has a tendency to establish the major proposition, and it ought to be sustained.

The *Lord Advocate*, however, gave up the question.

The examination of the witness was resumed. He deponed that there was something mentioned at the meeting about purchasing books, and Henry's History of England was mentioned. Being interrogated as to what books were purchased in consequence of this conversation? *Mr. Muir* objected to the question on the same ground as before; but the objection was repelled by the Court. The witness was then again interrogated, what were the books he had purchased, or any other person he knew? Deponed, that he purchased two or three copies of

the Political Progress of Great Britain, and three or four copies of the Paisley Declaration of Rights: That these purchases were made merely for his own amusement: That a copy was laid upon the table before the meeting was gathered: Knew of no copies of Paine being circulated: Had read it, but did not recollect from whom he had received it: Had seen one of the numbers of the Patriot, which was shown to him by William Muir.

*Cross-examined*—Henry's History of England was spoken of by Mr. Muir: Did not advise the people to riot: Mr. Muir rather advised them to constitutional measures, and said, the more constitutional the more successful they would be.

Re-interrogated by *Solicitor General*, and asked what he meant by a Reform in Parliament? Was every man to have a vote? Witness hesitated, and said there were different opinions—they wanted a more equal representation. *Interrogated* what he meant by a more equal representation—who were to have votes? The witness did not reply readily to this question, and the *Solicitor General* observed, that he wondered what Mr. Muir intended to make of the people;—if all the members of the Society were as ignorant as this witness—this Vice-President—they must know nothing about the matter. Witness then stated, that there were two opinions in the Society—one party was for having the rights of voting confined to landed property, the other wanted every man to have a vote. *Interrogated*, which party was he of? Witness had not fully made up his mind on the question. Did Mr. Muir give his opinion on this point? He did not.

Again *cross-examined* by *Mr. Muir*—Witness remembered that Mr. Muir dissuaded the people from tumult and sedition; and stated to the Society, that if they were to pursue unconstitutional measures, he (Mr. Muir) would desert them: Did not recommend one book more than another.

*Rev. James Lapslie*,* Minister of Campsie.

Mr. Muir rose and stated, that he had many objections to state, both to the admissibility and credibility of this witness. "My Lords, My delicacy with regard to that man will, at present, permit me to adduce the least weighty only, for I mean to prove the most important in a different shape—in a criminal prosecution against him, when he and I shall exchange places at this bar. I know not what title this reverend gentleman has to act as an agent for the Crown, but this I offer to prove, that he assisted the messengers of the law in exploring for, and citing witnesses against me;—that he attended the Sheriffs in their different visits to the parishes of Campsie and Kirkintilloch;—that previously to the precognition he conversed with the witnesses for the Crown—that he attended their precognition—put questions to them, and took down notes—nay more, that, without being cited by the prosecutor, he has voluntarily come forward as a witness on this trial. My Lords, upon *other* matters I shall not here dwell;—it

* See the sketch of him, p. 14.

is sufficient for me to say, that this witness attended the precognition of other witnesses, and the uniform and late decisions of your Lordships have sustained this objection."

The *Court* allowed Mr. Muir to adduce evidence in support of his objection, and he called

*Henry Freeland*, weaver, in Kirkintilloch, who deponed, that he was examined in a house in Kirkintilloch, before Mr. Honyman,* Sheriff of Lanarkshire. Mr. Lapslie was present, and put questions to witness. Lapslie asked him if he had ever seen Mr. Muir at any meetings? Witness answered, he had. When witness was signing his deposition before the Sheriff, Mr. Lapslie asked witness, "If he had got a college education?" Upon answering in the negative, Lapslie clapped witness on the shoulder, and said, "You write a good hand." Witness did not reply immediately, and Mr. Lapslie said, "It is a pity for such a clever young man as you to be a weaver. Mr. Honyman will, perhaps, procure you a birth." Witness said, "that is flattery!" Mr. Lapslie again clapped him on the shoulder, and said, "Not at all,—Mr. Honeyman will probably call on you again."

*Robert Henry*, engraver, Kincaid printfield. Witness admitted that he was examined at Milton, by the Sheriff, and that Mr. Lapslie was present.

*Robert M'Kinlay*, print-cutter, near Paisley, was examined at Campsie, by the Sheriff; Mr. Lapslie, and Mr. Sheils from Glasgow, were present. Mr. Lapslie spoke to witness before the examination, and bade him tell every thing, as it did not concern him, (the witness,) but Mr. Muir.

*Mr. Muir* now proceeded to call *James M'Gibbon*, when the Lord Advocate gave up Mr. Lapslie's evidence; consequently no other witnesses were examined in regard to the conduct of that gentleman.

The evidence for the Crown was then resumed.

*Henry Freeland* was present at a meeting in Kirkintilloch, called a Society for Reform, in November last—witness was president—Mr. Muir was there and made a speech that lasted about a quarter of an hour. The general purport of the speech was as to shortening the duration of Parliament, and a more equal representation of the people. Mr. Muir thought the taxes might be lessened by these means—said that a Reform was not to affect the King or Lords, but only the Commons. Mention was made of the success of the French arms, and that liberty would be established in France. Mr. Muir spoke of political books, but witness does not recollect of any but Henry's History of England—Witness remembers to have seen the proceedings of the Westminster Association, the Patriot, and Paisley Declaration. It had been suggested by one Boyd to purchase Paine, but Mr. Muir shook his head and said it was foreign to the purpose. Had some farther conversation with Mr. Muir in the house of Wallace,

* Afterwards created a Baronet, and Lord of Session and Justiciary.—See Pension list of Scotland for "Honeyman."

Innkeeper, Kirkintilloch; Mr. Muir said that Paine's book had a tendency to mislead weak minds.—Witness expressed a wish to see the book—Mr. Muir told him it was in his great-coat pocket lying on a chair in the room. Witness then took the book out of the great-coat pocket, and said he was surprised that Mr. Muir did not recommend it to him, because every body was pleased with it. Witness said to Mr. Muir that he believed the King's Proclamation was directed against Paine's book: Mr. Muir agreed in this: Witness took the book home with him and read it: He also gave it to others to read, viz. John Scott, wright, and John Stewart, cooper, members of the Society: Witness received two letters from Mr Muir—they took no notice of the circulation of the books: Mr. Muir said that a Convention of Delegates of the Friends of the People was to be held soon at Edinburgh, and he hoped to see witness there. A copy of Paine's work produced in Court, was identified by witness to be the book which he took out of Mr. Muir's great-coat pocket, as before stated: Witness first spoke of the book to Mr. Muir: William Muir was also present on the occasion.

*Cross-examined* by Mr. Muir: Witness had a conversation about forming a Reform Society before he saw Mr. Muir: Mr. Wallace, in whose house the meeting took place, was an old servant of Mr. Muir's father: Mr. Muir recommended no particular book except Henry's History of England: He cautioned them to be careful that they admitted none but persons of good moral character into their society—also advised them to follow none but legal and constitutional measures—and said mobs would ruin their cause.

INTERROGATED by Mr. Muir, "why was you so desirous to see Paine's book?" Witness answered, "because I was informed that the King's Proclamation was directed against it, and I was curious to see a book that was so much spoken of."

*William Muir*, weaver in Kirkintilloch: When the oath was proposed to be administered to this witness, he refused to swear, as being contrary to his religious principles: Being asked what these principles were, he replied that he was one of those who were called the Mountain: That he had no objection to be examined—and would tell the whole truth, but could not wrong his conscience by taking an oath which he considered unlawful.

The *Court* told him, if he would not swear, he would be committed to prison,—that there was no way by which he could ever obtain his liberation, and that his imprisonment would be perpetual: He replied that he could not help it, and that he knew the Lord could be with him in prison as well as any where else.

The *Lord Advocate* moved that this person should be committed to prison for his contumacy—and in express words informed him that there was no way by which he could ever be set free—that, in short, "his imprisonment would be eternal!!"

*Mr. Muir*—My Lords, I believe this person to be a good and conscientious man. Whether he be right or wrong in refusing to take this oath, is not an object of my inquiry: He is adduced as a witness,

in the prosecution against me. I have therefore the most material interest that he should be sworn, but rather than he should suffer for acting according to the dictates of his conscience, I waive my right, and I will admit every word he utters, though not upon oath, to be as true as if it were.

The *Court* observed that neither they nor the Jury could listen to any evidence except such as was given upon oath. The law expressly required it—and it could not be dispensed with.

The witness persisting in his refusal, the Court committed him to prison, declaring that they knew no mode by the law of Scotland by which he could be liberated! He nevertheless went to prison with the most astonishing composure.

*John Brown*, weaver at Lennoxtoun, Campsie: Was present at a meeting at Campsie about the month of October or November last: Mr. Muir and Mr. Buchanan were also present, and both spoke at that meeting: Witness was also at a meeting in Kirkintilloch: Did not understand that these meetings were called by Mr. Muir: Witness bought Paine's book, but does not recollect whether he did so before or after the meetings: Witness bought the book from mere curiosity, having seen it accidentally in the window of a shop in Glasgow: Does not remember whether that book was mentioned at the meetings: Does not recollect Mr. Muir speaking of France: The tenour of Mr. Muir's speech was to inculcate on the meeting the necessity of sobriety—to pursue constitutional measures—and to read constitutional books. In a conversation witness heard Mr. Muir say that Paine's book was not a constitutional book, and would not do.

*Ann Fisher*, late servant to Mr. Muir's father.*—Witness, while in the service of Mr. Muir's father, had frequent occasion to know how Mr. Muir was employed: During the vacation in harvest last, he was chiefly engaged in reading and writing: Does not know what he was writing: Remembers going to Mr. Menons, Printer in Glasgow, with a paper, which witness thinks was called a "Declaration of Rights," in order to have it reprinted: Saw a great number of country people come to Mr. Muir's father's house, with whom he had sometimes conversation in the back shop: Has often heard Mr. Muir say that Paine's Rights of Man was a very good book: Witness has bought that book for people in his company, sometimes at his desire, and sometimes at desire of the people: Remembers of being sent to purchase a Civic Sermon: Mr. Muir's uncle (Alexander Muir) was one of the people for whom she bought two different parts, at different times, of Paine's book: Also bought it for John Muir, hatter, who was much pressed by Mr. Muir to get one: Witness bought the book

* This woman was precognosced by the Rev. Mr. Lapslie. She was the principal witness against Mr. Muir, and it was noticed in the early reports of the trial that she answered the questions put to her by the prosecutor, with much promptitude and flippancy, and did not appear to be any way embarrassed when before the Court, a circumstance rather unusual for a girl in her situation of life. But we, perhaps, can give a cue to all this, when we state, that shortly before the trial she was taken into the service of the late Mr. John Carlisle, *Collector of Taxes* for Glasgow! We will give the remainder of her history in a little.

in Brash and Reid's, Booksellers, Glasgow: She purchased it also for one Barclay, a Weaver at Calder: Knows Thomas Wilson, who is Mr. Muir's hairdresser: Muir told Wilson to buy Paine's work, and keep it in his shop for the people who came there: Muir said it would enlighten their minds, and that it confuted Mr. Burke entirely: Witness herself has read Paine's book, as she was curious to see what was in it: The copy she read belonged to Mr. Muir's servant.* Witness has also seen Flower on the French Constitution: Has also seen the Declaration of Rights in Mr. Muir's room, and in the dining-room: Also the Dialogue betwixt the Governors and the Governed, which she has heard him read to his mother, sister, and others, but does not know any other persons who were present: Mr. Muir said it was written by Volnew,† one of the first wits in France: Witness does not remember to have seen the Patriot, but has heard Mr. Muir read the Paisley Declaration: Never heard him read law-books: Mr. Muir's conversation was commonly on political subjects, and he frequently read French law-books: Witness recollected hearing a conversation, wherein Mr. Muir said, that if every body had a vote he would be Member of Parliament for Calder: That Members of Parliament would then have 30*s.* or 40*s.* a-day, and that none but honest men would be Members of Parliament, who would keep the Constitution clear: That they would give new Counsellors to the King, who would govern the nation with justice: Mr. Muir said that France would soon be one of the most flourishing nations in the world, for they had abolished tyranny and were free: He also said that our Constitution would be very good if it had a thorough Reform: And that the Court of Justiciary would need a thorough Reform too, for it was nonsense to see the parade with which the Circuit Lords came into Glasgow: Said they got their money for nothing but pronouncing sentence of death on poor creatures, &c.

*Mr. Muir* here rose and objected to this line of examination.—He said, that the conduct of the Lord Advocate was in every respect highly reprehensible. He has put a variety of questions to witnesses, with regard to crimes of which I am not accused. The indictment charges me with making seditious speeches at Kirkintilloch and at Campsie, villifying the Constitution and the King, and inflaming the minds of the people to rebellion. It charges me with distributing seditious books—and it specifies that I gave away Mr. Paine's works—the Dialogue by Volney, &c. The indictment charges nothing more. There is not a word within its four corners which points out to me the charge of speaking disrespectfully of Courts of Justice, or "tending" in any manner to excite the people against the administration of the law. If the Public Prosecutor had evidence that I was guilty of a crime of this nature, he ought to have made it an article of accusation, and then I would have defended myself in the best way I could. But to attempt to steal it in as evidence in this way, to prove a crime which he durst not openly libel, because he *knew* it could not be

* This other servant was not examined to confirm Fisher!
† Volney.

supported, deserves the severest reprobation. I know the tendency of this little art. This witness—this domestic and well-tutored spy, is brought to prove words which may irritate the minds of your Lordships against me. Yes, this is the artifice—this is the object. But, my Lords, I contend upon the great principle of natural justice—upon the Constitutional law of this country, that no person can be tried for a crime of which he has not been previously accused. What is the purpose of an indictment? and why is it served upon the pannel fifteen days before his trial, but just to enable him to prepare for his defence? It is vain to say that, under the general charge of sedition, every thing "tending" to prove it, can be adduced, though not specially mentioned. If this is now to be adopted as law, what portion remains to us of our national liberties? Every thing is insecure—an indictment will no longer be regarded but as a piece of unmeaning paper. The unfortunate man who receives it may say, I am charged with robbery—I have many witnesses to prove I did not perpetrate the crime, but what avails preparing a defence? For I may be instantly called upon to defend myself against a charge of murder—of sedition—or of high treason. In short, if under the specious pretence of being allowed to introduce what is not specified in the libel, to support its generality, —if you establish a precedent of this kind, you strike a fatal blow against individual security, of general safety, and the forms, precedents, and principles of the Criminal law of this country are for ever gone. It is vain to say that the statute of James the 6th allows this proceeding. That statute is now obsolete. It was enacted under a despotic reign, when the freedom of Scotland was trampled under the foot of power. It opposes every principle of justice, and will you, my Lords, after the lapse of so many years, descend into the grave, and drag up the pestilential carcase, in order that it may poison the political atmosphere? This question, my Lords, is of little importance to the individual who is now struggling for the liberties of his country. But the eyes of your children will be fixed upon this trial, and they will tremble and shudder at the precedent. I feel for the country—I feel for posterity—I will not sanction the procedure, which is to produce to both a system of injustice—of ruin—and of murder.

*Lord Advocate.* The pannel is indicted for the crime of sedition, and that crime may consist of many facts and circumstances, and of these the strongest must be, the feloniously and seditiously stirring up the inhabitants against the King and Constitution. To prove this, his Lordship contended, that he was entitled to bring, in evidence, every word of any conversation which might have passed betwixt Mr. Muir and ignorant people,—every paper, every fact, and every witness which could be got. No person could deny the relevancy of the fact, viz. that the abusing and vilifying the Courts of Justice was an aggravation of the crime of sedition,—it is that crime of which the pannel is accused, and his Lordship certainly would be permitted to bring forward every thing which could support the charge. If it had been necessary to specify in the indictment, all the facts against the pannel, that indictment would have covered, by its magnitude, the walls of the Court.

*Mr. Muir.* This is not the time to entertain your Lordships with frothy declamation—with sounding, but unmeaning periods. I pleaded my objection upon just principles. Every person here must see their strength, and admit their truth.

*Lord Swinton* said, that it was the general proposition of the libel, that the pannel went about sowing sedition; and as Courts of Justice were parts of the Constitution, he was of opinion, that reflecting on them was included in the general charge.

*Lord Dunsinnan* was of the same opinion, and declared that every particular circumstance, that may come out in evidence, need not be libelled.

*Lord Abercrombie* said, there was no necessity for specifying in the libel every seditious expression that might be used.

*The Lord Justice Clerk*, after making a few observations, also concurred, and the objection was therefore unanimously disregarded.

The witness, *Ann Fisher*, on being re-called, stated, that she heard Mr. Muir say, he was for a Monarchy under proper restrictions; that a republican form of Government was best; but that, as the Monarchy had been so long established in this country, it would be improper to alter it. Witness was sent, by Mr. Muir's desire, to an organist in the streets of Glasgow, and desired him to play *Ca Ira.*

The examination of Fisher being now concluded by the Lord Advocate, Mr. Muir was asked if he had any questions to put to the witness? He replied, "No, my Lords; I disdain to put any questions to such a witness."

The witness, on her part, turned round, and asked the Court if she might put a question to Mr. Muir? The Lord Justice Clerk said he would not permit this, and his Lordship characterised Mr. Muir's recent expressions as very improper.

His Lordship complimented the witness by saying, that "he had never heard a more distinct and accurate witness in his life."

*Lord Henderland* declared, that if Mr. Muir had not been standing at that bar, as a pannel, he would have ordered him to prison for the expressions he had just used!

As the witness was withdrawing, one of the Jurymen (Captain Inglis) called her back, and asked her, if she had had any quarrel in Mr. Muir's father's family? To which she replied, that, so far from that, her mistress had given her five shillings more than her wages, and that Miss Muir had given her a petticoat, with some other presents.*

*Thomas Wilson*, barber in Glasgow, was in use to dress Mr. Muir in autumn last. Mr. Muir asked witness if he had bought Paine's works? Witness said he had not. Mr. Muir advised him to get a

* She might have added, that Mr. Muir's mother supported her parents when they were in a state of abject poverty. These circumstances, and others we could state, only make the conduct of this witness the more flagrant. We are not yet done with her.

copy, as a barber's shop was a good place to read. Witness did not purchase the work, but he bought a copy of the "Address to the Addressors," and kept it a day or two, but this was not by Mr. Muir's advice. Remembers an old man from the country coming to Mr. Muir, when he was dressing him, and Mr. Muir told witness that the old man was a great Reformer, on which the old man replied, that Mr. Muir was only taunting him.

*Cross-examined by Mr. Muir.* Witness has heard Mr. Muir say, that he would maintain the Constitution;—that he wished for peace, good order, and morals among the people—never heard him say any thing against the King: Has seen Mr. Muir's library in the country, which is a large room open to all the family.

After this witness was examined, the Lord Advocate informed the Court that he had just received a note from Mr. Dunn, Minister of Kirkintilloch, (cited as a witness) respecting Mr. Muir, who was committed to prison for refusing to take the oath: The note intimated that Mr. Muir was a parishioner of Mr. Dunn's, and that if the latter were allowed to converse with him, he might be able to remove his objection to taking the oath: After some discussion, Mr. Dunn was sent to converse with the prisoner in presence of one of the officers of Court, and Mr. Dunn* was ordered to confine himself solely to the removing of Muir's scruples, and not to say any thing on the subject of the trial.

*John Muir*, hat manufacturer in Glasgow, knew Mr. James Muir's father: Saw Mr. Muir at his house in September last: Mr. Muir and witness had a conversation about Mr. Paine's book: Witness asked Mr. Muir as a favour to get it for him, when Mr. Muir said, he had it not, but would send for it: A servant girl was accordingly sent for the book, and she purchased it at Brash and Reid's, booksellers in Glasgow: Witness took home the book with him and read it.

*John Barclay*, of Calder, was acquainted with Mr. Muir: Conversed with him about Paine's work, because witness saw it advertised in the papers: Mr. Muir said he might buy it, but added "it is not a book for us:" Witness was an elder in the parish of Calder, and voted on the same side with Mr. Muir in the election of a minister: In consequence of this, witness was frequently with Mr. Muir, and in his library, from which witness borrowed books: Had many con-

* This gentleman got over the finger ends by the Lords of Justiciary. He had preached a Sermon before the Synod, and the Reformers thought it so liberal and excellent, that they sent Mr. Dunn their written vote of thanks for it. This was quite enough to stamp the good man as a radical. His house was searched for "seditious papers." He took alarm—and threw the vote of thanks in the fire. He candidly told the fact. But what was the consequence? The Lord Advocate presented a Petition and Complaint against him to the Lords of Justiciary. He threw himself "on the *clemency* of the Court." "Their Lordships after delivering their opinions on the criminality of the act in which they were unanimous, observed that if Mr. Dunn had been served with an indictment, (instead of a Petition and Complaint,) and been found guilty, the Court must have inflicted the highest arbitrary punishment. But their Lordships were pleased at being relieved from going so great a length. They therefore *ordained him to be imprisoned in the Tolbooth of Edinburgh for three months!!!*"—*Vide Edin. Advertiser*, 1793.

versations with Mr. Muir, heard him say that the Constitution was an excellent one, and the best in the world: Heard Mr. Muir praise the King, and always heard him speak of order, regularity, and obedience to the ruling powers.

*James Campbell*, W. S. was present at a meeting of the Convention: Called there on his way home from the Parliament House: Mr. Muir came to the meeting soon after, and read a paper, being the address from the Society of United Irishmen: Colonel Dalrymple opposed the paper being read, and talked of taking a protest: After Mr. Muir read it he said nothing more, but before he read it he spoke of answering it: Does not know how the paper came there. *Interrogated* whether the purport of Mr. Muir's speeches approved or not of this paper? Witness answered, that he knows nothing more than that he proposed its being read and answered: It was assigned as a reason for not receiving the address, that they had no connexion with it: Mr. Muir thought there was no impropriety in receiving and answering the address, and said he would take the burden on his own shoulders.

*James Denholm*, Writer, Edinburgh, was at the Convention in December: Pannel was there: Heard him read the Irish address: Objections were made: Mr. Muir answered that he saw no harm in it, and moved that an answer should be sent to it, though witness thinks it was carried that an answer should *not be sent*.

*Cross-examined.*—Never heard Mr. Muir say any thing unconstitutional: The object of the Association was to get a Reform in Parliament.

*Mr. Robert Forsyth*, Advocate:* Witness was a member of the Convention of Delegates of the Friends of the People, who met in December last: Was present when Mr. Muir read the Irish address: Recollects that objections were made to the reading of it: Some members objected to the legality of the paper: Witness objected to it on the ground that it was "not expedient to answer it:" There were some exceptionable passages in it. In one place it said something about an inviolable Constitution being tyranny: Witness thought they should have nothing to do with it: At same time, witness did not think it a seditious paper; only that it contained some expressions too strong: Mr. Muir defended the paper, and proposed that it should lie on the table and be answered.

*Cross-examined.*—Witness remembered the Convention coming to a resolution of adhering to the genuine principles of the Constitution: The object of the Convention was to obtain a Reform in Parliament: Was not present when a resolution was entered into about sedition, and for expunging such members as behaved riotously: Mr. Muir proposed that a suitable answer should be sent to the Irish address: Never heard him advise the people to sedition, tumult, or riot, and never heard him make any speeches that had that tendency.

* This gentleman has surely *changed* his early political principles, for we observe his name at the late *anti*-reform petition in Edinburgh!—*Vide Scotsman newspaper of March*, 1831.

*William Muir.*—The Rev. Mr. Dunn having succeeded in removing the scruples of this individual, he returned to Court, and took the oath as a witness. He then stated that he was present at a meeting in the house of W. Wallace in Kirkintilloch with Mr. Muir: Henry Freeland and Wallace were there: They had a copy of Paine's works at this meeting, which was taken out of Mr. Muir's great-coat pocket: Does not know whether Mr. Muir desired it to be taken out of his pocket: Does not recollect what was said about the book: Knows that Paine's book says that the people's will is the sovereign will: Cannot say that the pannel said so: Witness got the loan of 11 Nos. of the Patriot, and Political Progress, from Mr. Muir, at Hunterhill: Witness mentioned that he was in a Reading Society, and Mr. Muir bade him shew the pamphlets to the Society: Heard pannel speak something about the inequality of the representation, and mentioned Old Sarum.

*Henry Davidson*, Sheriff-Substitute of the county of Edinburgh,* was called to prove the declarations emitted by Mr. Muir before the Sheriff, and the papers found upon him when apprehended at Stranraer. Mr. Muir, however, in order to save time and trouble, offered to admit them under condition that none of them should be used as evidence of criminality, seeing there was not a single article in the indictment which alleged that these papers were even of a culpable "tendency."

The *Lord Advocate* insisted that he was entitled to bring forward every circumstance which might tend to criminate the pannel; although these circumstances should only be collateral, and not in direct issue.

The Clerk of Court was about to read the declaration, letters, &c. inserted in the Appendix, when

*Mr. Muir* stated, that before the letters were read he had an objection to state, though he believed he would state it in vain, for however just any objection made by him might be, it was sure to be over-ruled; but every mind tinctured with humanity would shrink at the wanton disclosure of the anxiety and grief of a private family for the purpose of indulging an idle curiosity.†

The *Lord Advocate* disclaimed any intention of indulging in idle curiosity, but insisted that the letters should be read, as they would go to shew that the pannel was conscious of his guilt.

*Mr. Muir*—I am convinced of the reverse. I now, therefore, join issue with the prosecutor, and consent to these letters being read. There was nothing in them which he wished to conceal on his own account.

After the declaration and letters, &c. had been read, the Lord Advocate declared the proof finished on the part of the Crown.

*Mr. Muir* proceeded to adduce the following evidence in support of his defence.

* Afterwards appointed Sheriff Clerk, county of Haddington.

† Mr. Muir obviously referred to letters he had received from his father and mother.

*William Shirving*, of Strathruddie, Secretary to the British Convention. Witness knows that it was considered necessary that Mr. Muir should attend a meeting of the Friends of the People, held in London in January last. Witness received a letter from Mr. Muir, mentioning that he had appeared in the Society at London, of which Mr. Grey* is a member, and giving an account of what had been done there. Witness cannot at present find the letter, owing to some late circumstances which occurred in his family; but, according to the best of his recollection, it also stated, that Mr. Muir was advised by some friends to go to France, as he might have some influence with the leading people there, in mitigating the fate of the King. While Mr. Muir was at Paris, witness received a letter from him, giving an account of the execution; and Mr. Muir stated, that he would return to Scotland as soon as his friends here thought his presence necessary. Witness has frequently been with Mr. Muir in private, and often heard him speak in public in the Societies: Never heard him speak against the Constitution: The general tenour of Mr. Muir's address to the people in the Societies was, to impress on their minds the necessity of good order: Never heard Mr. Muir speak against the monarchial part of our Constitution. Witness has been in his company in his most unguarded moments: Remembers a private conversation with Mr. Muir, in which he disapproved of many of the principles in Paine's book, and both agreed that many of them were impracticable. *Interrogated* by the *Lord Advocate*, if he was not the person who had designed himself, on a late occasion, *Secretary General* to the Association of the Friends of the People? Witness answered, that it was a mere mistake in writing out the petition—he was Secretary to the General Association of the Friends of the People.

*James Campbell*, W. S. acted as agent for Mr. Muir in the beginning of last winter: Received two letters from him from France, which witness produced. These letters were read by the Clerk of Court. They expressed Mr. Muir's willingness to return home whenever it should be necessary.† Never heard Mr. Muir attempt to excite the people to sedition or outrage: He exhorted them to avoid riotous conduct, to behave orderly and peaceably, and to attend to the moral character of those whom they admitted members: Knows that Mr. Muir's opinion of Paine's book was, that it might be dangerous for people of weak minds.

*John Buchanan*, baker, Edinburgh, has often heard Mr. Muir speak in societies in favour of Parliamentary Reform: Heard him recommend morals, peace, and good order, and that all their applications should be directed to Parliament in a constitutional manner. Mr. Muir used to say in conversation, that the Constitution ought to be to them the Polar star, and they should begin reformation by first erecting among themselves the temple of morality: Does not

* Our present Noble Premier.
† Vide Letters themselves, Appendix.

remember of hearing him give any opinion on Paine's books: he always wished the people to have their minds informed.

*Captain W. Johnston*, Edinburgh, never heard Mr. Muir harangue the people to excite sedition: Has heard him speak at several public meetings: Knows that the principles of Mr. Muir were for supporting the Constitution, and all the other principles held by him grew out of this one. While Mr. Muir was in France, witness received one or two letters from him on general subjects, in which Mr. Muir also mentioned his intention of returning home.

*Maurice Thomson*, starchmaker, Edinburgh, once heard Mr. Muir, in a Society of the Friends of the People, deliver a speech about Reform: He recommended that their measures should be moderate and constitutional.

*Charles Salter*, brewer in Edinburgh, has heard Mr. Muir speak in Societies three or four times: He exhorted them to Constitutional measures, peace, and good order; and declared, that if ever they did any thing unconstitutional, he would be the first man to oppose them.

*Peter Wood*, teacher, Edinburgh, has heard the pannel speak in Societies, and impress upon them the necessity of petitioning the House of Commons: Never heard him speak against the King or House of Lords: Never saw him distribute any books or pamphlets: Heard him say, that no members should be admitted into the Society who were inclined to faction.

*David Dale*, merchant, Glasgow, was present with Mr. Muir at meetings of the Friends of the People, in the Star Inn, Glasgow: Recollects a motion was made recommending political books, which Mr. Muir opposed, and said, that no political books should be recommended, as most of them partook too much of party spirit,—and that knowledge could only be acquired by general reading: Advised the people to inform themselves on both sides of the question: He also said, that it was only by calm and constitutional means that the people could gain their ends,—and that they had no other mode of obtaining it than by petitioning Parliament: Never heard him say any thing which had a tendency to excite sedition: He always advised the people to be quiet and orderly: Never knew of his distributing books, or recommending Paine's works: He advised the Society to expel any member who behaved seditiously or disorderly, and declared, that he would absent himself if unconstitutional measures were adopted.

*Cross-examined* by *Lord Advocate*, and asked if he recollected when Mr. Muir was first apprehended? Witness answered, he could not tell precisely. *Interrogated* if he thought it was in the month of January, or in any of the succeeding months? Witness answered, that he could not be positive—it might be about five or six months ago.

*Lord Advocate*. "You have a very short memory, Mr. Dale?" Witness, "I have, my Lord."

*William Riddel*, baker, Glasgow, was present at several meetings in Glasgow with Mr. Muir: Never heard him recommend any books or pamphlets—and never saw any disorder in the meetings of the Friends of the People.

*William Reid*, bookseller, Glasgow, is a partner of the firm of Brash and Reid, booksellers, Glasgow: Had an accidental conversation with Mr. Muir, and witness asked his opinion respecting the propriety of selling Paine's Rights of Man: Mr. Muir dissuaded witness from selling it, and said, "it was an improper book, and dangerous to weak minds."

*Cross-examined* by *Lord Advocate*. Mr. Muir gave witness this advice a few days before the Sheriff came to take precognition concerning the book.

*George Waddel*, manufacturer in Glasgow, was at a meeting of the Friends of the People, in Glasgow, when a motion was made, recommending political books. Colonel M'Leod and Mr. Muir, who were present, opposed the motion, and said, that every political book contained something good and something bad: Never heard Mr. Muir recommend any other books than Blackstone's Commentaries on the Laws of England, and Erskine's Institutes of the Laws of Scotland. Mr. Muir continually advised moderate but firm measures, and said he would glory in having the table of the House of Commons covered with Petitions in favour of Reform: It was proposed by some members to address the French Convention on the success of the Revolution, but Mr. Muir opposed it.

*John Russell*, merchant, Glasgow, sworn, and the usual question being put, "If any person had instructed him what to say?" He answered, none; except to tell the truth. Being asked by the Court who instructed him so, he replied he could point out no person in particular, but that it was the general advice of all to whom he spoke. He was required to produce his summons as a witness, from which it appeared that he had only received it four days before the trial, and he was told by the Court that any person who spoke to him must have done so in the interval of these four days. And, therefore, that it was impossible he could forget all their names. The witness replied, that the general instruction to speak the truth was so common, that he could not remember at present any particular person who had given it.

The *Lord Advocate* moved that the witness should be committed to prison for "prevarication on oath!"

*Mr. Muir* rose and attempted to speak in behalf of the witness, but he was interrupted by the Court, who commanded him to sit down, as he had no right to interfere in the business.

*Lord Henderland* gave his opinion. Every appearance, said his Lordship, was against the witness, who wished to conceal the truth. He merited punishment, and should be committed to prison.

The rest of the Judges concurred with Lord Henderland; and Mr. Russel was committed to prison for three weeks as guilty of concealing the truth on oath!!*

*John Brock*, manufacturer, Glasgow, attended a meeting of the Friends of the People in the Star Inn, Glasgow, where he heard Mr.

* See letter of explanation from Mr. Russel, Appendix.

Muir recommending good order and adherence to the Constitution. Mr. Muir declared, that if the people became riotous, he would leave them that moment: Has heard Mr. Muir speak of books of the law: Cannot remember any in particular, although he thinks he referred to the works of the great John Locke.

*Wm. Clydesdale*, cabinet-maker, Glasgow: Witness never joined any Society of the Friends of the People, but is a member of a Society in Glasgow for a Reform of the Boroughs. In December last, Mr. Muir visited that Society, and said that the Borough Reformers had made great exertions. He recommended to them perseverance, firmness, and peaceable measures—reprobated the idea of equality—and said that the division of property was chimerical, and could never take place.

*George Bell*, manufacturer, Glasgow: Has heard Mr. Muir speak in the Society of the Friends of the People at Glasgow, and declare that no members should be admitted into the Society but such as acknowledged the King, Lords, and Commons: Never heard him speak against the Constitution: He only recommended such books in general as would inform their minds, and render them better members of society.

*Daniel M'Arthur*, master of the Grammar School, Glasgow, remembers to have had a conversation with Mr. Muir in the Coffee-room, at Glasgow, in September or October last: Saw Mr. Muir and another gentleman walking together. The gentleman having gone away, Mr. Muir came up to witness, and said that the person with whom he had been, was Chairman of the Society of the Friends of the People in Edinburgh. Witness said to Mr. Muir, "Do you not think this is a wrong time to insist for Reform in Parliament?" Mr. Muir answered, that he thought it a proper time, as the country enjoyed the blessings of peace, and that there was no comparison betwixt this country and France—that, in France, they had brought about a Revolution, but we wanted only a Reform.

*James M'Gibbon*, Kincaid Bleachfield, was a member of the Reform Society of Campsie: Has seen Mr. Muir there: Never heard him recommend any books, or speak against King, Lords, or Commons.

*Robert Hendrie*, Kincaid, gave evidence to the same effect.

The *Lord Advocate* said it was unnecessary for Mr. Muir to bring so many witnesses to prove the same thing.

*Mr. Muir* replied, that he intended to bring witnesses from every part of the country where he had attended meetings for Reform, that he might clearly prove his innocency: He had only a few more witnesses to adduce.

*Wm. Orr*, manufacturer, Paisley, stated, that Mr. Muir and Colonel Dalrymple came to Paisley, and with witness visited and addressed the different Societies of the Friends of the People there. Mr. Muir, in his speeches, inculcated a firm attachment to the King and Constitution: He recommended peace and regularity, and reprobated riot and sedition: He also exhorted the people to be steady, and to pursue their object by all legal means. After having gone through the dif-

ferent Societies, Mr. Muir, Colonel Dalrymple, and witness, went to Sinclair's Inn, Paisley; and, in the course of private conversation, he heard Mr. Muir say nothing against the King and Constitution, but heard him say that the King was the best of Princes.

*James Craig*, manufacturer, Paisley, saw Mr. Muir in a Society at Paisley: Heard him say that the Constitution was a good one, and that the King was the friend and father of his people.

*James Richardson*, merchant, Glasgow, is a member of the same Society of the Friends of the People in London, of which Mr. Grey is a member: Witness is not a member of any Society of the Friends of the People in Scotland: was present at a meeting of the Friends of the People in Glasgow, when he heard Mr. Muir exhort them to keep by the Constitution, and that if any of the members were against it, they should be expelled. Mr. Muir, in a very masterly manner, exposed the absurd idea of liberty and equality, as implying a division of property, and said that such a system was totally impracticable.

*Mr. Muir* now stated that he had finished his proof in exculpation: that it was in his power to adduce many more witnesses, but that he deemed it totally unnecessary.

*The Lord Advocate* rose and addressed the Jury nearly as follows:

Gentlemen,—I now require your most serious consideration of what has passed. The pannel at the bar is the man, as I shall afterward show you, that has been sowing the seeds of discontent and sedition under the specious pretext of reform. He has appeared here before you, after having been fugitated in this country, and now by your verdict, from which there is no appeal, either his guilt must be fixed or extinguished. Gentlemen, This is the moment which I have long and anxiously looked for; and I declare, that in the range of my official capacity, among the persons whom I have brought to this bar, if there has been any one whose actions particularly pointed him out for prosecution, whose conduct appeared the most criminal, who has betrayed the greatest appearance of guilt, this is the man.

Gentlemen, We all know the pernicious effects of the many instances of seditious writings and practices which have lately appeared in this country; and all those persons who have had the courage to come and stand a trial at this bar, have met with the same fate—they have all been found guilty. And I trust, that as the evidence has clearly unfolded the diabolical and mischievous conduct of this person, that he will receive a similar verdict.

Gentlemen, I could not have conceived that a man, who has received a liberal education—who has practised as an advocate at this Bar, should be found, on any occasion, among ignorant villagers, and low manufacturers,* purposely to sow sedition among them.

The charge against the pannel divides itself into three distinct heads, which, however, all centre in one general charge of exciting sedition.

1st. That he circulated Paine's Rights of Man, to speak of which I

* What a libel on the nation!—by a man, too, whose family have sucked so many thousands of the public money!

think it unnecessary, after he himself considered this book "too dangerous to weak minds." Yet he has wilfully circulated this book in such a manner, as proves that his intention was to overturn our happy Constitution.

2dly. He has always been found, as I have stated, making seditious speeches and harangues among knots of ignorant labourers, and herds of poor manufacturers, whom, I am entitled to say, had it not been for him, would have remained peaceable and contented, and never thought of that incendiary Paine, nor of forming meetings, till he, like the demon of sedition, stirred them up by forming clubs. The very attempt was the same which, in another country, has produced so much anarchy and confusion, and which no government could allow.

3dly. He was in a meeting, calling themselves a Convention of Delegates for obtaining Parliamentary Reform. Gentlemen, We all remember the transactions of last winter. It was then that sedition raised its hydra head, but which the spirit of this country crushed, and since that day has held in utter detestation. It was then that good men felt and trembled, and though some late circumstances may have given cause to suspect that discord is still endeavoured to be excited, I have not a doubt that you will by your verdict this day, show that you still entertain the same abhorrence of these practices. There, in that Convention—I shall call it by no other name—he, almost alone, was found the supporter and defender of a paper—a paper penned by some infamous wretches, who have, like himself, fled from the punishment that awaited them—which came from a Society styling themselves United Irishmen,* and which, even in that convention, was considered dangerous. Yet this person was the ringleader, who insisted that it should be received and answered.

These three heads resolve all into one charge—that of exciting discontent, nay almost rebellion, against the Government;—that most dangerous kind of sedition, which, according to Judge Blackstone, is next to high treason.

Gentlemen, In one thing I agree with the person at the bar, that this trial is of consequence to posterity. I grant that it is; but whether as it strikes him, you are this day to judge. It has been my wish to obtain, in this case, the verdict of such a respectable Jury as I now see. Gentlemen, You are to determine if sedition be a crime

* This tirade was levelled at Mr. Hamilton Rowan, a gentleman to whom we have already referred, and who might well stand a comparison with the Lord Advocate Dundas, either in regard to birth or fortune. Mr. Hamilton Rowan, on hearing that the above language was applied to him, instantly came over from Ireland with his friend the Honourable Simon Butler, brother, we believe, of the Earl of Kilkenny, and demanded an explanation or apology from the Lord Advocate. But his Lordship would not come to the *scratch*, whereupon Mr. Hamilton Rowan posted him in the following terms:—"The Lord Advocate of Scotland, Robert Dundas, having asserted on the trial of Thomas Muir, Esq., that an Address from the United Irishmen of Dublin to the Delegates for Reform in Scotland, to which my name was affixed as Secretary, was penned by those infamous wretches, who, like himself, have fled from the punishment that awaited him; and an explanation having been avoided, under the pretext of official duty, I find it now necessary to declare that such assertion of the Lord Advocate IS A FALSEHOOD!!" (Signed) A. H. ROWAN.
"*Dec.* 17, 1793."

of such a horrid nature as I represent it? I bring forward the arm of power to crush it, and which will be either invigorated or palsied by the verdict which you are to give. You will consider the conduct of the pannel, and then say whether it is such a conduct as in your minds ought to be passed over.

Gentlemen, As the charge is of three kinds, the witnesses are also of three kinds: and if ever there was a respectable set of witnesses, whose evidence stands on the basis of truth, they are to be seen here: and in place of being contradicted by his witnesses, they are completely corroborated by them.

Gentlemen, As to the charge of seditious speeches, we find him in different parts of the country exciting in the people a spirit of disaffection to the lawful Government. There has he been recommending books to enlighten their minds, a measure in which, however, he has been very unsuccessful, if we may take Weddel, the learned vice-president of the Kirkintilloch Society, as an example of its effects.

The evidence I chiefly rest upon here is Johnstone's, and no evidence can be more distinct, connected, and clear. He and Freeland both agree, that the pannel spoke of the success of the French arms. What could be his motive for discoursing on this subject to such low, ignorant, and illiterate people? Why talk to them of the burden of taxes, if he did not mean to light up the flame of discontent in the country? Gentlemen, We may hope to live to see these burdens lightened, but you will not allow *that* person to proceed in his mode of doing it. The lessening of taxes, and payment of the national debt, are subjects which always engage the attention of the lower ranks of men, and you will judge the propriety of haranguing them on such popular topics. He told them, that if they were more equally represented, they would not be so heavily taxed, and that the burden of taxes prevented them from bringing their goods to market upon equal terms with the people of France. Could any measure be devised more calculated to produce discontent and sedition than this? Had such societies existed before he came among them, the case would have been somewhat different; but he appears everywhere the ringleader. We find him with them on the Tuesday preceding the meeting, and conversing about it. He comes to the meeting, harangues them, and then adjourns with a select party to Wallace's. Can you desire any stronger proof of his being the main instrument and promoter of these dangerous meetings, than the clear, convincing, and connected evidence, I have laid before you?

Gentlemen, The circulating seditious books is the next charge I shall speak to. The passages selected from them, you will see in the indictment. The witness Freeland is again an evidence here. I must observe to you, that it appears extremely doubtful whether he told all that he knew. You might have seen by his face that he prevaricated; and when closely questioned, the sweat broke upon him. He says he got Paine's book out of Muir's pocket. This is a mode of circulating a book which a man of his disposition would very naturally adopt. He did not go openly, but privately. You will judge of him

when you have compared his actions with his professions. Indeed every evidence goes to prove, that this wretch is tainted with sedition from head to foot, and more unworthy of the protection of the law than the meanest villain.

The next witness I shall speak of is Anne Fisher; and though the pannel, by an expression which he made use of, has endeavoured to prejudice you against her, I dare say, Gentlemen, you will agree with me, that her evidence is correct, well founded, stands on the basis of truth, and is corroborated by the evidence of others.* She was repeatedly sent to purchase Paine's book, and she mentions the persons for whom she bought it. She was sent from her master's house, the pannel's father, who I am informed is a respectable citizen; but I do not mean to attach any criminality to him. That person at the bar has the miserable reflection of having himself imbittered the lives of his unfortunate parents. There in his father's shop, did he harangue all the poor ignorant country people, and persuaded them to lay out their miserable sixpence to purchase the Rights of Man. There was he always found in the *back* shop reading seditious publications. In that den of sedition he sat like a spider spinning his filthy web to entrap the unwary. The witness names the persons for whom she purchased Paine's book. One of those persons she condescends upon, is the uncle of that unfortunate wretch at the bar. But I decline bringing the uncle as an evidence against the nephew.

Wilson likewise corroborates the evidence of Anne Fisher, when he depones, that he was advised to keep a copy of Paine's book in his shop, because "it would enlighten his customers, for that it refuted Mr. Burke entirely." What! *he* confuted Mr. Burke!—a man whose wonderful talents—astonishing genius, and sublime efforts, have lately been so nobly exerted in the defence of our glorious Constitution!—Gentlemen, you have now only to read the passages quoted from that book in the indictment, and if you are loyal to your king—if you love your country, and are desirous to preserve it, you will return a verdict against this man, who has dared to recommend that wretched outcast and his writings—works which I never read till my official situation obliged me to it. But I need not tell you my opinion of this book, since the whole country holds it in detestation. (Here the Lord Advocate read some passages from the indictment.)

Now, Gentlemen, when he approves of sentiments such as these, what signifies all his evidence of attachment to the King and Constitution? We are told, indeed, by one of his witnesses, that he advised him not to sell Paine's book; but when closely questioned upon his cross-examination, it unfortunately turns out that this was from a sense of danger, not from real sentiment—it happened, you will remember, Gentlemen, about the time that the Sheriff came to inquire about this book.

Gentlemen, it even appears from the evidence of Fisher, that the

* This witness, so much lauded by the Court and Prosecutor, became a *common strumpet*, and died like the vilest of the vile.

poor organist could not pass the door of this demon of mischief, but he must be stopped to play *Ca Ira*—a tune which is made use of in that unhappy country France, as a signal for blood and carnage. It may be said that the evidence of this girl is somewhat contradicted by that of the pannel's friend old Barclay the elder. But you will recollect the salvo* that this witness chose to introduce when he took the oath—that did not look well.

I am now advanced to the third charge of the indictment, which relates to the pannel's proceedings in that "Convention of Delegates," as they styled themselves. It is clearly proved that in that place, he read, approved of, and defended the Irish Address. But, Gentlemen, you will not approve of such a paper, nor disregard such a convincing proof of his guilt—nor will you, were his abilities ever so great, or his views ever so comprehensive, permit that person to set up his daring and seditious opinions, in opposition to the excellent Government of this country. Indeed, his actions in some instances appear tinctured with madness—and were it not that we find him every where a determined enemy and ringleader in a horrid scheme of sedition against our happy Constitution, it would be impossible to tell whether his conduct was marked more with wickedness or insanity.

Gentlemen, Having finished my remarks upon the evidence—an evidence which I am convinced must appear to you incontestible, there remains only two topics on which I must beg to make a few observations. The pannel has said that he left this country on business of importance—that he was unwillingly detained in France—and that he always wished to come forward to this trial. But we shall soon see how this corresponds with facts. I should have made no objection to his proving this. It would have argued some degree of honour. But these false assertions are all clearly refuted, and I will make it appear that he *fled* from this country under the impression of guilt—and now he is returned to be again the pest of Scotland, with the same diabolical intention as before.—But, Gentlemen, what was the reason of his going to France? I was never more surprised at any thing than the evidence of Skirving, when he told us that the pannel was sent to France by persons styling themselves the Friends of the People, because it was believed he might have influence in saving the life of the King of France.† Did the witness know—did he recollect that he was at that time accusing the pannel of high treason? But why were these people so much interested in averting this event? The witness has informed us. It was thought such an event would hurt their common cause. What cause? The design of overthrowing the Government of this country. There then, he stands an ambassador from a Society in this country to France, a circumstance which greatly heightens his guilt.

Gentlemen, I have postponed this trial much longer than I ought to have done, because I was willing to give the pannel every opportu-

* After uttering the words of the oath, "to tell the truth so far as you know," the witness properly added, "and can recollect."—This was the "salvo" to which the Lord Advocate alluded.

† See explanation of this in a letter of Skirving, Appendix.

nity of returning, and I inserted the adjournment in the public papers in the expectation that it might find him while roaming through the world. Observe the shipmaster's receipt—it is dated the 16th of May—what became of him all the time from that date, till the 31st of July, when he was apprehended? Nobody was informed of his intention of returning. How unlucky that not one solitary letter was wafted by the winds, or impelled by the waves, to his friends here, and inserted in the Edinburgh Gazetteer, or Caledonian Mercury, to give notice of what he says was his earnest wish; but the very reverse of this was the case. By his father's letter we find him in Ireland, and who knows how he was employed there? We know nothing of him all this time, except what we may discover from the diploma of the *respectable* Society of United Irishmen.

Gentlemen, You may know a man by the company he keeps. Among his papers there is a letter addressed to the Rev. T. Fyshe Palmer; a man who in a few days is to be tried at Perth. The seal of that letter is remarkable. It is a Cap of Liberty on a Spear, and under it is the motto *Ca Ira*. You see, Gentlemen, the pannel returns to this country with all the insignia of sedition about him.

Gentlemen, I beg your attention to a passage which I shall read to you from a celebrated French author. We will see what was his opinion of the British Constitution. (Here the Lord Advocate read a very long quotation from De Lolme on the British Constitution, from the middle of page 554 to the end of the book.)

Gentlemen, You have heard what a foreigner has said of our glorious Constitution, and you must be sensible how carefully we ought to preserve it. I trust you will view this case in the same light as I do. You will protect your King from the attacks of his enemies, and you will guard this temple of freedom from all the attempts of the factious. You will not allow it to be violated by that person at the bar; and you will now, Gentlemen, prevent his attempts in future; and I conjure you to do justice to your country, and honour to yourselves, by returning such a verdict as shall stop that man in his mad career, who has been sowing sedition in every corner with so liberal a hand.

*Mr. Muir* addressed the Jury nearly as follows:

*Gentlemen of the Jury,*—I now rise in my own defence. I have long looked forward with joyful expectation to this day. All that malice could devise—all that slander could circulate, has been directed against me. Gentlemen, I speak with pride and triumph. After an inquisition, perhaps unexampled in the history of this country, my moral character stands secure and unimpeached. Upon my public conduct I regarded that inquisition with scorn and in silence. With the paid and anonymous assassins of public reputation—with such mean and worthless adversaries, I disdained to enter the lists. I reserved my vindication to this day, when before you, in the face of Scotland, I should manifest my innocency. Gentlemen, I supplicate no favour. I demand justice. You are bound to grant it. I shall not imitate the

example of the Public Prosecutor, who has just finished his pleading. Sounding and unsubstantial declamation is unsuitable for you—it is unworthy of me. This is not the time to temporize. The eyes of this country are fixed upon us both. The records of this trial will pass down to posterity. And, Gentlemen, when our ashes shall be scattered by the winds of heaven, the impartial voice of future times will rejudge your verdict. In the meantime, let faction rage—let the spirit of party in the present hour proudly domineer—the illusion will soon vanish away. In solitude, the power of recollection will assume its influence—and then, Gentlemen, it will be material to you to consider whether or not you have acted uprightly, or sinned against your own eternal conscience, in my acquittal, or in my condemnation. Gentlemen, there are two circumstances which have been strongly insisted upon by the Public Prosecutor, though they have little or no connexion with the general nature of the evidence he has adduced. I shall take some notice of these circumstances here, before I enter into a particular vindication of my conduct. Long, indeed, has he harangued upon them, and has exhibited them in every form his imagination could suggest. He maintains, that, after I had been examined by a Magistrate, after an information had been filed against me, I fled from this country, conscious of my guilt! Gentlemen, I admit the fact of my departure. But, in those days, in these circumstances, can it be ascribed only to conscious guilt? When the whole strength of arbitrary power is exerted against one individual, would it be commendable in him to expose himself as a sacrifice, when his sufferings might be of no service to his country, and would only present posterity with an addition to the vast catalogue of the victims of despotism? If there are only two motives to which you can assign my departure, you are bound in justice to ascribe it to the most charitable. But do the circumstances attending my departure bear any resemblance to a flight?—Did I not publicly announce it the preceding evening in a numerous meeting of citizens?—Did I not cause it to be published in a newspaper?—Did I affect the garb of concealment?—When in London did I remain in obscurity?—Did I not appear in a distinguished Society—the Society of the Friends of the People?—And did not that Society afterwards publish a resolution, announcing in its preamble my appearance among them?

But why did I go immediately to France? In Mr. Skirving's evidence respecting a letter he received from me before I left London, he has said that I proposed to go to Paris, as it was the advice of some friends I might be of some service in mitigating the fate of the late King of France. The words of Mr. Skirving, "*some friends*," have been ingeniously represented to be members of that truly respectable Society; and it is boldly argued that I went as a missionary from that body. Nothing can be more injurious: I am sorry that Mr. Skirving has not been able to produce the letter alluded to *—it would have clearly demonstrated the falsehood of the assertion. But Mr. Skirving

* See letter of explanation from Mr. Skirving, Appendix.

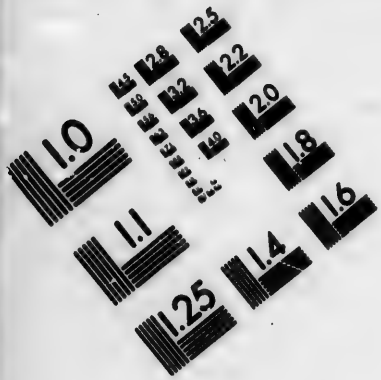
never said so! No person can or dare say, that I went as a missionary to a foreign power, or even received any delegation either from individuals or from any Society whatever. Building, then, upon this unsubstantial basis of words, never uttered in evidence by Mr. Skirving, I am accused of a species of "high treason," in being a missionary to a foreign power without any legal authority from this country. The charge is equally ridiculous with the misrepresentation on which it is founded Let it, however, be considered as serious,—I dare the proof,—I challenge the Prosecutor to adduce the smallest vestige of evidence in support of it.

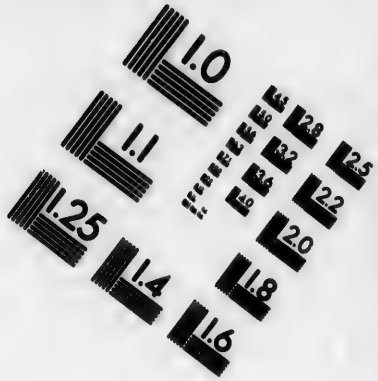
Gentlemen, I admit I wrote to Mr. Skirving of my intention of going to France—nor will I deny the motive. I saw in the execution of the late King a specious pretext for plunging the country into a war, and for extending the effusion of human blood to every corner of the world. I may have erred; I may have acted from enthusiasm; but it was an enthusiasm in the cause of man. If at the period when it was free for every person to publish their sentiments upon that awful occasion, is it to be imputed to me as a crime that I wished likewise to publish mine? Has not the Prosecutor lamented that disastrous event, and will he not excuse a man who wanted to prevent it? who with many friends to humanity of every nation, and of every party, in private, and in public, in conversation, and from the press, exerted their abilities to ward it off, because they considered it pregnant with evil to this country, and foresaw that it would introduce years of blood and of sorrow?

It is said that my departure from Scotland, and my journey to Paris, are circumstances which afford some presumption of guilt. But, Gentlemen, that presumption is now done away,—*I have returned.*

Gentlemen, The Public Prosecutor has boasted that he *delayed* the trial to give me an opportunity of returning—that he postponed it for some weeks and advertised it in the public papers, which he supposed would find me "roaming in some part of the world." But was *he* ignorant that hostilities were at that time commencing, and that it was tedious and difficult to procure passports? Of that difficulty surely every person here is convinced.

All my private letters which have this day been read, prove my uneasiness on account of the delay, and my anxiety to return. But before I procured any passport, hostilities had commenced between this country and France—the flames of war were blazing over Europe. There were only two ways by which I could return home,—the first by the way of Hamburgh—the second by the longer, but more certain circuit of America. The latter course appeared more safe, and less liable to interruption. I therefore adopted it—I left Paris—I arrived at Havre de Grace, and found a vessel there bound for New York. The receipt from the master of that vessel for the payment of my passage, which was found in my pocket-book when I was stopped on my landing in Scotland, proves that I had actually taken my passage. This vessel, however, was detained almost three months by taking on board her cargo, and by an embargo, which was at that time laid on all

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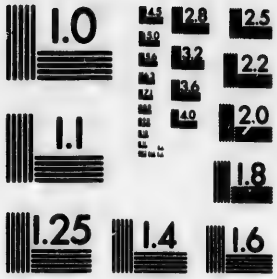


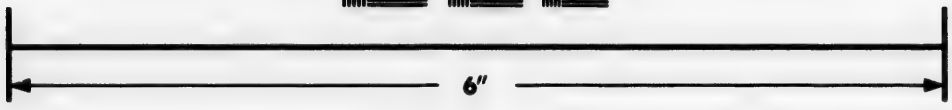

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neutral vessels in the ports of France. In the interval another American vessel, the Hope, of Baltimore, arrived, which was to touch at Belfast for a part of her cargo before she returned to America. This appeared to me a fortunate circumstance, and I immediately adopted the plan of returning to Scotland by the way of Ireland;—not to supplicate favour—not to implore protection,—but *to demand justice.*

After a short passage I was landed in Ireland, but I remained there only *three* days. I did not conceal my name. I appeared in all the places of public resort—to all I announced my situation and intentions. But it is said there have been insurrections in that country, and the Prosecutor insinuates that the "demon of sedition," as he calls me, was probably the cause of these insurrections. Gentlemen, I smile at the ridiculous accusation. It might have been easy for me, by the testimony of my friends in Ireland, whom I love and honour, to have proved how I spent every hour of my time. I could have made it appear, that I associated with a few friends who were chiefly engaged in literary pursuits.

Gentlemen, The Prosecutor has said I came from Ireland to Scotland in "a *private* and *clandestine* manner," and his composition, the Indictment, contains the same injurious assertion. Now, Gentlemen, I am extremely sorry that the respectable Magistrate, Mr. Ross, at Stranraer, is not here. In the list of witnesses adduced against me I saw his name, and the name of Carmichael, the person who first recognised me on my landing at Portpatrick. I therefore expected to have found them both inclosed with the witnesses for the Crown; and I would have adduced them to prove, that so far from concealing myself, I announced myself publicly and without disguise. But the conduct of the Public Prosecutor is uniformlymarked ..h disingenuity. When he served upon me, in the list of the witnesses for the Crown, the names of Carmichael and Ross, I could not entertain the least doubt but that they were to be adduced. This, however, seems to have been an art to prevent me citing them at my own instance. It has succeeded, and I am now precluded from the benefit of their testimony. But why did not the Prosecutor at least produce the declaration which I made before the Magistrates at Stranraer? That declaration would have proved, that I did *not* come into this country in a clandestine manner. And as much invective has been founded upon my coming into Scotland in a clandestine manner, as it is charged as a circumstance of aggravation against me in the Indictment, you will judge of the rectitude of the Prosecutor's conduct in thus declaiming upon a fact which he shrinks from *proving*, and which his artful contrivance prevents me from *disproving*.

Gentlemen, You are now, I trust, convinced that no "consciousness of guilt" led me from Scotland;—that no improper motive carried me from England to France; and no deep and secret intention induced me to return in disguise to my native country. Gentlemen, I have already stated to you, that the object of that return was to *demand justice*, to wipe away the imputation of the crime of which I am now charged. And what, I ask, is that crime? *It is* SEDITION

—a term the most vague and undefined,—a term familiar to power—familiar to corruption,—a term which has been applied in one age to men rejected by society, but whose names were honoured by after times, and upon whose virtues and sufferings, in the succeeding age, the pillar of the Constitution was erected. Gentlemen, the records of history—the monuments of former ages—the annals of the present period—all attest that this crime of sedition is of the most ambiguous complexion. Those who have dared to oppose *arbitrary power*, who have ventured to stem the tide of corruption, or to come forward in the hour of danger, and to save their country, have been branded with this epithet. The term, in fact, is no longer injurious. Experience will make you to connect along with it no prejudices. You will scrutinize the idea; you will investigate the fact combined with the intention. And, Gentlemen, let us proceed to that investigation. Tell me where the smallest vestige of sedition has appeared? Has property been invaded? Has the murderer walked your streets? Has the blood of the citizens flowed? O no! But it is said, although the effects of sedition have not taken place, the *attempt* was meditated!!

Gentlemen, The Prosecutor has talked of the danger the people of this country were in last winter—of the deep-laid plots and treasonable conspiracies of the Friends of the People! And I am the man whom he charges as the author of the whole,—whom he represents as similar in malignity to the demon of mischief, and whom he honours with the title of the "*pest of Scotland!*" Well, then, let it be supposed that an attempt was formed to overthrow the Constitution, to kindle the torch of civil war, and to lead rapine through the land; where, I ask, has the *proof* of this design been found?

Gentlemen, Every thing has been explored. An inquisition, unknown even in Spain, has been carried on. Every thing transacted within the walls of private families has been industriously inquired into; and to prove this mighty crime which is to convulse the State—which is to tear the Constitution from its basis—the principal witnesses are a *true* and *respectable* scullion girl, and a hairdresser, who cannot speak to *actions* but to *words!* I have addressed numerous Societies—the doors were open. We disdained concealment, for our intentions were pure. Could not some ruffian be procured who could at least give a manly testimony to our "*atrocious*" purposes? But to adduce a girl, and a hairdresser, the domestics of a private family, to prove a crime which required the co-operation of many thousands of bearded men, while it excites the frown, must likewise call forth the smile of contempt, from the just and the impartial. But let us be candid.—Let us advance upon fair and open ground.—Let us throw away miserable pretexts. If standing forward for an equal representation of the people in the House of Commons, is the impelling motive of this prosecution, (and I judge it is,) let it be acknowledged. I shall give little trouble. I will plead guilty to the charge. I will save you, Gentlemen of the Jury, the wretched mockery of condemning a man for a trifle, while the principal cause of condemnation cannot be declared, and must be concealed.

Yes, Gentlemen, I plead guilty. I tell you that I openly, actively, and sincerely embarked in the cause of a Parliamentary Reform, in the vindication and in the restoration of the Rights of the People. Nor do I hesitate to unfold to you my motives—they are supported by their own intrinsic strength, and they are sanctioned by the great and venerable names of the living and of the dead. Gentlemen, I have boldly contended for an equal representation of the people, in what I shall ever call the House of the People, because I consider it to be a measure essentially necessary to the salvation of the State, and to the stability of our boasted Constitution. Gentlemen, I ask in what consists the excellency of that time-tried fabric, cemented by the blood of your fathers, flowing from the field and from the scaffold? I will tell you: It consists in the JUST BALANCE of the three great impelling powers of King, Lords, and Commons. If one of these powers lose its vigour, the efficacy of the Constitution is proportionably impaired—if one of these is absorbed by another, the Constitution is annihilated. Is it not known to you, and acknowledged by all the world, that the popular branch of our Constitution has suffered the ravages of time and of corruption? The fact is indisputable. The representation of the people is no[t] what it once was, AND IS NOT SUCH, AS I TRUST IN GOD, ONE DAY IT SHALL BE. And, Gentlemen, no *enmity* to his country can surely be said to influence the conduct of that man who sounds alarm when the Constitution is in danger—who summons all who m[ay] be concerned in its reparation, and labours to *preserve* it, by endeavouring to *restore* it, to its original purity.

Such, Gentlemen, are the motives which have influenced my conduct. If you find me guilty, you implicate in my condemnation, men, who now enjoy the repose of eternity, and to whose memories a grateful posterity has erected statutes. I have been doing what has been done by the first characters of the nation. I shall not at this time repeat all the venerable catalogue. But is any one ign[orant] of the illustrious LOCKE, whose treatise on Government is w[ritten] in the irresistible language of reason and of truth, and who supported by philosophy the cause of liberty and of man. Was not he the friend of the British Constitution? Yet he was an advocate for a Reform in Parliament, for a more equal representation of the people in the House of Commons. Will you, therefore, tear the records of *his* fame—will you stigmatise *his* memory, and brand *him* with the name of Sedition?

Let us rapidly proceed down to modern times.—Let us pass over in silence many illustrious names, whose memories, with that of the Constitution, will perish together.—Let us come to our own days. Gentlemen, are ye ignorant of BLACKSTONE, the man who first collected the laws of his country from the deformed chaos into which they had been thrown, who arranged them with elegancy, and adorned them with every flower which the classic field could produce? Are not the volumes of this revered Judge in the hands of all? And has not Blackstone, not with the levity of ill pondered words—not in the private hour of relaxation—not in the heat of popular debate, but in the calmness and solitude of study—maintained the same propositions

which I maintain—been guilty of the same sedition of which I am guilty, when he pronounced that the Constitution was imperfect in its popular branch, and that if any *alteration* was necessary, it was *there* to be desired.

But, Gentlemen, I shall not refer to writers who are now no more, and who are beyond the reach of punishment. Vengeance ceases in the grave. There factions and parties cannot rage.—But if I have been guilty of a crime, I shall not claim the protection of the dead. I shall not wander among the tombs supplicating the assistance of those who cannot hear me. I have the greatest *living* characters on my side—men high in rank and power—who enjoy the confidence of the King, and are admitted into the bosom of his Counsels. Why, Gentlemen, the Prime Minister of the country, Wm. Pitt, and the Commander-in-Chief of the army, the Duke of Richmond, have both been strenuous advocates of Reform. Are they not then criminal as I am? It can never be forgotten, that, in the year 1782, Mr. Pitt was tainted with sedition by proposing a Reform in the House of Commons. Did he not advise the people to form themselves into Societies?—and did he not encourage them by his example, and countenance them with his presence? Beware, then, how you condemn me; for at the same time you must condemn the confidential servant of his Majesty, who was in the year 1782, what I am in the year 1793—*a Reformer*.

Gentlemen, You will further remember, that, in the year 1782, the Duke of Richmond was a flaming advocate for the right of Universal Suffrage. He presided in Societies; and, like Mr. Pitt, advised the formation of such Societies all over the kingdom. Has guilt, then, nothing permanent in its nature—does it change with times, and seasons, and circumstances? Shall the conduct which was deemed patriotic in 1782, be condemned as criminal in 1793?

I have been honoured with the title of the "*Pest of Scotland;*" but if similar offences merit similar epithets, the same title must likewise be bestowed on the Chancellor of the Exchequer, and the Commander of his Majesty's Forces. (Here Mr. Muir turned to the Lord Advocate, and, in a strain of bold and cutting eloquence, exclaimed)—And pray, my Lord, what term of super-eminent distinction will *you*, the Public Prosecutor, the Lord Advocate of Scotland, claim *for yourself?* You also were, not many months ago, a Reformer. *You* contended for a more equal representation of the people in the House of Commons. *You* were one of those men who, for that purpose, lately assembled in this city, in what they called a *Convention*, and assumed to themselves the title of Delegates from the *Counties;* and *you* were then employed in framing a Bill for extending the Elective Franchise! Why, my Lord, in accusing me, you charge yourself with sedition—every charge in your Indictment against me, recoils upon *yourself*. If it was lawful for *you* and *your* friends to meet in Societies and Conventions, for the purpose of obtaining Reform, it cannot surely be illegal in me and my friends to meet, and to act on the same principle.

I shall not, however, Gentlemen, detain you longer on this point; although my assertions are founded in truth, and my reasoning is just, yet the subject is too ridiculous to be dwelt upon in this man's trial.

Gentlemen, The first charge in the Indictment is, that I was concerned in convening meetings of the people, at which I made seditious speeches and harangues, vilifying the King and Constitution, &c.

Now, Gentlemen, the first witness adduced in support of this charge is *Alexander Johnstone*. You will remember the objection I stated to this witness, and which I could have supported by respectable witnesses, if I had been allowed. But what does Johnstone prove against me? (Here Mr. Muir, from his notes, read Johnstone's evidence.) The witness says I stated the imperfection of the representation, from Burghs being rotten, and other places having no vote. And do you call this sedition? The witness swore he heard me say, that if a man threw away £20,000 to procure a seat in Parliament, he surely had some interest in it. And can it be supposed that any man in his senses would give such a sum for a seat in Parliament without having some sinister view? In no proposition of Euclid is the conclusion more demonstrable than the inference which I drew from this undeniable fact. It may be said that this has been done from ambition—from a man's desire of exercising great talents for the benefit of his country, or of displaying his eloquence to the world; but have we not seen it done as often by the man who never said a word within the walls of the House besides *aye*, or *no*, as well as by the splendid orator? And have we not seen it practised by the cool and cautious speculator, who never lays out his money without calculating on a profitable return? Bribery at elections has for a long time been sapping the foundation of liberty, and ruining the morals of the people. The most flagrant instances of its baneful influence stand recorded on the journals of the House of Commons;* and is it not an evil which the corrupt cannot deny, and which good men have always endeavoured to redress? The witness deponed that I said the Duke of Richmond had got £20,000, or £30,000, put into his pocket—and what though I said so? I again say that that was the salutary opiate which calmed and cooled the fever of his brain, and probably saved him the mortification of standing *his* trial also for the crime of sedition. But, Gentlemen, this has no concern with the question at issue. It is not the Duke of Richmond, but the King himself, that I am accused of vilifying.

Allow me, Gentlemen, before I proceed farther, to make one remark. If you do not consider *all* the circumstances under which such words were spoken, and even the manner in which they were uttered, you may attach to them a meaning which the speaker never intended—you may torture them into guilt, or explain them into innocence.

Gentlemen, With regard to what was said about France—is it not notorious that the representation of the people in France is more equal, and the taxes less, than in this country? Are incontrovertible *truths*

* Just think of the recent case of Liverpool, where upwards of £80,000 have been expended by Messrs. Ewart & Dennison!

to be construed into a libel? But who ever heard before that it was unlawful to compare the British Constitution with that of another country? If the British Constitution is the boast of ages, the pride and glory of the world, can it suffer by any comparison? No, Gentlemen.

As to Paine's book—the witness does not say that I recommended it—he says that I did not recommend any particular book, but reading in general—and he has not been able to prove one single unconstitutional expression. Now, Gentlemen, when I recommended general reading, I advised the people to communicate among themselves the knowledge which they might have possessed, I gave them good advice, and such as I should repeat, were I again in the same situation. And will I be condemned for so doing? Is the time come when the mind must be locked up, and fetters imposed on the understanding? And are the people to be precluded from that information and knowledge in which others are so materially concerned? Oh, unhappy country! Miserable people! the remembrance of former liberties will only make you more wretched. Extinguish, then, if you can, the light of heaven, and let us grope, and search for consolation, if it can be found under the darkness which will soon cover us. But, Gentlemen, the prospect before us is not so dismal. We live and we act under the British Constitution—a Constitution which, in its *genuine* principles, has for ages consecrated freedom. We live, and we remember the glorious Revolution of 1688, which banished despotism, and placed the family of Hanover on the throne. We remember the Bill of Rights—nor shall we forget one of its most sacred clauses, which declared, established, and sanctioned, the inalienable claim of the Citizen to petition Parliament. If, then, you condemn me for advising people to inform themselves, and to diffuse the knowledge obtained by that information to others, and then calmly and deliberately to petition Parliament, you not only condemn me, but you trample upon the liberties of the people, and you proscribe the Constitution.

Gentlemen, The advice I gave, I repeat, I shall always consider to be good advice—my motives were pure. I did not enlist myself under the banners of a faction. I combatted neither the Ministry nor the Opposition—neither the *Inns* or the *Outs*. I fought in the cause of truth—and how is that cause to be successful, but by general, complete, and impartial information of the different arguments advanced upon either side of the great question of Parliamentary Reform?

The witness swears, that I said the Constitution ought to consist of King, Lords, and Commons. Is this vilifying the Monarchy? Is this representing that part of the Government as expensive and cumbersome, as the Indictment accuses me? Is *this* "inflaming the minds of the people," and "exciting them to insurrection and rebellion?"

The witness further says that the meeting was principally composed of young Weavers, from 18 to 21 years of age. I blush to mention the inference which the Lord Advocate has drawn from this, that people in that situation of life, and of that age, have *no right* to concern themselves in public affairs! People in that situation! Why,

Gentlemen, instead of sneering at them, it would have been more becoming in the Lord Advocate to have said that they are in the "situation" of those who compose the great mass of society,—who support the Government by their industry, and who fight the battles of their country. And what age?—That period of life when the heart is uncorrupted, when the soil is best prepared to receive the good seed, and when the mind is most susceptible of the impressions of virtue and humanity. Must the members of that Society be held up to derision, because the majority was composed of Weavers—and because they might be principally young men? Must they be censured for interesting themselves in the welfare of that country in which they were to spend the remainder of their days? And must they not presume to inquire into the nature of that Constitution in the operation of which the happiness of their future lives is so materially concerned? Gentlemen, You will remember that this witness stated that I recommended peace and regularity,—that I told them there was no other way of procuring redress, but by an application to Parliament;—that I advised them to receive no immoral characters as members—and you will judge how far such advice accords with the criminal charges of the Indictment.

The next witness is Robert Waddel, Vice-President of the Kirkintilloch Society. From his examination there appears no proof of criminality, not the most slight indication of guilt. It is to be observed, that he deponed to circumstances which occurred in the same meeting, at which the former witness was present; they, however, do not agree respecting my general conduct. I am accused of vilifying the King and Constitution;—and what does this witness say?—that I made a speech, in which I advised regularity in their proceedings, and that they ought to proceed in a constitutional manner, as the law now is, by King, Lords, and Commons. This indictment alleges, that I reprobated the monarchial branch of the Constitution. But the witness swears that I said nothing about the expense of the King, nor the comparative expense of the French Constitution, nor the success of their arms. Gentlemen, I speak with candour: it is not in my remembrance that I spoke concerning the comparative excellency of the French and British Constitutions. You hear one witness declaring that I merely compared them together; you hear this witness declare, that I made no mention of either Constitution. Both of them may have spoken truth, according to the impression on their minds; but they shew you the danger of trusting to the memory of witnesses, when it relates to words spoken in the warmth of a public discussion, and attempted to be recollected after the lapse of many months. But give whatsoever degree of strength you choose to Johnston's evidence,—draw from the comparison which you may assume, I instituted, between the French and British Constitution, I say, draw from it an inference as highly criminal as you possibly can, still the testimony of that man is completely overthrown by this witness. Mr. Waddel has stated to you what passed after the meeting was over, in private company, in the unguarded hour, when the mind

dreads no danger, and when vigilance is asleep. Can any thing prove more strongly than the deposition of this man, the innocency of my conduct? The conversation related to politics and to new publications, and he remembers me speaking of Flower on the French Constitution, which, though not mentioned in the indictment, you will recollect the Lord Advocate wished to bring forward as seditious, and as a circumstance "*tending* to prove the crime charged." I am not acquainted with the respectable author of that book; but if, from writing, a true idea may be formed of the heart, there is not a man that I would more fondly call my friend. If any one wish for a Reform in Parliament, let him read and weigh well the lessons which Mr. Flower has inculcated, Gentlemen, the witness next depones, that I recommended Henry's History of England. And so, I am called an enemy to the Constitution, because I recommended to the people the book best calculated to instruct them in its principles and progress,—a book which was warmly recommended by the great Earl of Mansfield, who first brought it into notice, and procured the author a pension from the King!

This witness, you will recollect, was asked by the Solicitor-General, what he meant by a more equal representation? He stopped for a moment to consider. Oh! what a matter of triumph was this!—then burst the contemptuous sneer from the other side; and then, with affected ridicule, was pointed out the absurdity of men, so ignorant, embarking in the cause of Reform, when even their Vice-President, if any had known, should have been the man. Why, Gentlemen, by all, excepting Mr. Pitt and the Duke of Richmond, who contended for Reform,—and in all that was said in the late debate in the House of Commons,—no *specific* plan was actually brought forward. Is it then a matter of surprise, that the witness, who is certainly as much entitled to become a Reformer as the Lord Advocate, stopt for a moment to consider his answer to the question? But, Gentlemen, his answer was such as did honour to the coolness of his mind, and to the soundness of his understanding. Two opinions, replied he, divided the Society: one was for confining the right of voting to landed property, the other, for every man having a vote; but he had not made up his mind upon either. He declared at the same time, that I did not give any opinion on this subject.

Gentlemen, I shall not at this time say much with regard to the very Rev. gentleman who was next called as a witness, as I intend to bring a criminal prosecution against him. My objections to his admissibility were sustained, before I entered upon the threshold of my proof, by the Lord Advocate's wisely giving him up. I am sorry for the Prosecutor's timely precaution;—it prevented me from bringing a cloud of witnesses against this gentlemen, to prove practices, nay crimes, which —— but I shall go no farther at present,—my most rancorous enemy was aware of what would have followed; and even he, it appears, would have blushed to have brought forward this man's testimony. But I trust that you, Gentlemen of the Jury, will this night do justice to my innocency, and if by your verdict I am

acquitted from this bar, I here solemnly pledge myself, that I shall in my turn become his prosecutor.

Gentlemen, I am charged in the Indictment with having convoked the meetings which I afterwards harangued. Now, Henry Freeland, the next witness, President of the Society at Kirkintilloch, depones, that there was an intention of having a Society there *before* he ever saw me. Where then is this charge in the libel supported by evidence? He mentions that the general purport of my speech was about shortening the duration of Parliament, and a more equal representation; that I said I thought taxes might be lessened by these means, and that reform was not to take place as to the King and House of Lords, but only as to the Commons. Call you this sedition? Does not every thing brought forward by these witnesses of the Crown, confute the false, the injurious, and the scandalous charge in the libel, of "vilifying the Constitution," and of "exciting the people to rebellion against the King?"

Gentlemen, I now come to the most material part of Mr. Freeland's evidence—indeed the most material evidence which the Prosecutor has been able to produce. A wide field is now before us, and I request your most serious attention to what I shall now say, as it relates to a principal charge of the libel.

Gentlemen, The Indictment charges me with "wickedly and feloniously circulating and distributing Paine's book, in order to inflame the minds of the people against the Constitution." Now, Gentlemen, I ask you to lay your hands upon your breasts, and to say whether, in the circumstances under which I lent that book to the witness, there appears a shadow of "felonious" intention? You know, Gentlemen, the newspapers of the day were full of advertisements announcing where the works of Mr. Paine were to be found. The cause of this curiosity in the public mind may be easily unfolded, without uttering a single syllable upon the intrinsic merit or demerit of these works. The situation of France roused the attention of Europe. To that country every eye was turned, and every man who could wield a pen, was employed in discussing the principles which the revolution had called forth. Mr. Burke entered the field of controversy. The name of that gentlemen would give sale and diffusion to any production. Mr. Burke fought upon one side of the question. He was encountered upon the opposite by Thomas Paine—both of them champions of approved vigour, and of undoubted prowess. Could public curiosity not be awakened to the contention of such men? It was most completely: the works of Burke and Paine flew with a rapidity to every corner of the land, hitherto unexampled in the history of political science. Is there a single man among you, who has not read the works either of Paine or of Burke? Is there a person upon the Bench, upon the Jury, or in this audience, who has either not purchased, or lent the treatise upon the Rights of Man? Now, if one of you lent to a friend or relation, who might participate in the common curiosity, a single pamphlet of Mr. Paine's, you are just as guilty as I am. If there had been a public *law* of the kingdom

*condemning* that book, the presumption of innocence could not be admitted by its rigid rule, and the mere act of giving away a single copy, would have been considered a violation of the letter of the law. But at the period when I lent Mr. Freeland, Paine's works, was any sentence of reprobation thundered against them? No! Therefore, Gentlemen, I was guilty of offending no existing law. I was not certified of my danger—I was not put upon my guard. Was there a judgment of any Court in England or Scotland against this book at that time? No. Therefore I had no cause for alarm. True, some months before, a proclamation against seditious writings had been issued; but a proclamation, Gentlemen, is not law—it has no legislative authority; and there was no mention of Mr. Paine's works in that proclamation. Can you, therefore, now suppose, that there was any "felonious intention" in lending this book? Did I advise the witness to read it, or to adopt its principles? Why, Gentlemen, the mighty crime of sedition, with which I am charged, reduces itself into this simple fact—that to gratify the natural curiosity of a person who lives in my neighbourhood, and who is a distant relation, I lent a book which was in universal circulation, unnoticed by courts of justice, and uncondemned by law.

[Here symptoms of impatience began to be manifested by some of the Jury! Mr. Muir instantly noticed it, and said:]

Gentlemen, If, whether right or wrong, you have come here determined to find me guilty, say so boldly, openly, and, let me add, honestly: resort not to idle pretexts and expedients to justify a stretch of power. The unprejudiced eye will soon penetrate into these pretexts, and the determination will soon receive the contempt and indignation of mankind.

Gentlemen, I would now wish to direct your attention to what Mr. Paine's writings are, and to the particular manner in which they are presented in accusation against me. And, Gentlemen, I will allow, that any writing which calls upon the people to rise in arms, to resist the law, and to subvert the Constitution, is something worse than seditious—that it is treasonable. But do the writings of Mr. Paine stand in that predicament? Can you point out a single sentence where he provokes insurrection? In fact, Gentlemen, Mr. Paine's writings are indisputably of a *speculative* nature. He investigates the first principles of Society—he compares different forms of Government together, and where he gives the preference, he assigns his reason for so doing.

Gentlemen, I have neither time nor inclination to entertain you by any dissertation on the liberty of the press. If that liberty is sickly, the Constitution is likewise diseased. If that liberty is extinguished, the Constitution expires. You may ask what is the precise notion which I affix to the term Liberty of the Press? I will tell you honestly and without disguise. By the liberty of the press, I mean not the power of assassinating the reputation, or torturing the feelings of individuals. No crime, in my estimation, can be more heinous. By the liberty of the press, I mean not the power of degrading and

contaminating the public mind by tales of immorality. By the liberty of the press, I understand not the power of inflaming the minds of men against the Constitution—of stimulating the people to insurrection, and of tearing down the barriers of public property and of public security. Where Government is established, that Government must, or ought to be respected. And the truest Republic which ever yet existed, never could tolerate the internal foe, who within its own precincts, sounded the charge to civil war. By the Freedom of the Press, I understand the INALIENABLE RIGHT OF PUBLISHING TRUTH; of presenting to the world whatever may tend to public good—not hurting the feelings of individuals—trampling down morals—or established laws.

Gentlemen, Constitutions of Government are the workmanship of men: that Constitution is the most perfect which can be most easily amended. There are Constitutions which, step by step, without convulsion and without blood, have advanced to superior degrees of perfection,—which by their own internal energy have effected their own reformation, and avoided the calamities of a Revolution. These *progressive* Constitutions, if I may use the expression, must always cherish and support the liberty of the press, as the chief instrument of their preservation. And, Gentlemen, how grateful should we be to Eternal Providence, that our Constitution possesses in itself the power of amendment—that without a Revolution, it can rectify its abuses—and that silently and without disorder, it can advance towards that chastened liberty, which constitutes human felicity. You have read the history of the British Constitution, and what is it but the history of a continual progress? And what has been the impelling cause of that progress? I answer, the universal diffusion of information by means of the liberty of the press. If you destroy that liberty, the people will be buried in ignorance—the iron throne of despotism will be erected. Let us then apply this argument to the case of Mr. Paine. This work, I again state, is merely of a speculative nature, upon the principles of Government. Now, if Mr. Paine's work is inconsistent with the principles of the British Constitution, what is the consequence? If the book is written with ingenuity, it will acquire readers. No man in his sound senses, the keenest advocate for a Parliamentary Reform, but will avert his eyes bathed in tears, and in horror of soul, from a Revolution. He will compare the principles of Mr. Paine with the Constitution. If Mr. Paine has pointed out any thing defective in the Constitution, he will contribute his humble efforts to have that defect repaired. If, on the other hand, he still imagine that Mr. Paine has taken an erroneous view of this edifice, has misrepresented its properties, he will become more and more sensible, from his inquiry, of the security which he enjoys under its protection. The sense of danger will be removed, and his mind, undisturbed by gloomy apprehensions, will enjoy tranquillity. Oh, how little do ye deem the British Constitution, who think that it is built upon the sand, which, when the rains descend, and the floods come, and the winds blow, and beat upon it, that it shall fall.—No, Gentlemen! When the rains descend, when

the floods come, when the winds blow, it shall NOT FALL, for it is founded upon a rock. I then maintain, though not in accents sweet to the ear of corruption, or grateful to our courtly pride, or acceptable to ill-got power, that those speculative writers, who investigate the principles of our Constitution, who compare that Constitution with those of other countries, perform a meritorious service to this nation; these writers rather impel us to rectify that which is wrong, or more strongly confirm us in our love and in our attachment to that which is right. Let Mr. Paine, then, be considered the bitterest enemy, if you will, to our Constitution, yet as long as he confines himself to speculation, we should not complain. Our best interests are involved in the Constitution, but, alas! like interests of a higher rank—which are superior to time and extend to eternity—they are too apt to be forgotten, or to make but little impression upon us. But, Gentlemen, I say that if Mr. Paine has pointedly called our attention to the Constitution, he has performed to us an essential service—he has led us to contemplate its perfection, or roused us from our lethargy, to rectify such parts of it as may have suffered decay by time and corruption.

Gentlemen, Shall the lending of a single copy of the works of this writer be held criminal? Was there ever such a violation of the rights of Britons? Mr. Paine has composed no model of a perfect Commonwealth, as Mr. Hume has done; yet I dare say you have all read the political works of Mr. Hume, and even applauded them. But if you do condemn a man for lending a copy of Mr. Paine's work, you do what even was not attempted to be done in the reign of Henry the Eighth, when the Constitution, if I may so speak, was shorn of its strength, and nearly strangled on the rack of despotism. Gentlemen, allow me to ask, whether with equality of rights, Mr. Paine has ever preached equality of property?—a chimera which may have entered into the brains of those who dream of a golden age, but who do not understand human nature. Yet, Gentlemen, under the arbitrary reign of Henry the Eighth, did not the illustrious Sir Thomas More, enjoying the confidence of the King, and placed at the head of the law, publish his Utopia, the plan of his republic, of which an equal division of property, an Agrarian law, an universal community, formed the grand basis? And, Gentlemen, in this enlightened age;—when after so many fiery trials, our Constitution, in its pure and genuine principles, stands unveiled to our view, will you condemn a man for lending a work equally speculative, and, if such a thing existed as a well-founded panic against "levellers," I would say, infinitely more dangerous?

Gentlemen, I should be the last man to propose to your imitation the conduct of despots; but I call upon you to ponder well the words of a man, who rendered the terms republic and despotism nearly the same—I mean CROMWELL. Under his Protectorship, when Harrington published his Oceana, a host of informers denounced that work. But what was Cromwell's memorable answer to them? "*My cause*," said he, "*is too strong to be hurt by paper shot.*" Gentlemen, if *you* say, that by any *publication* the British Constitution can be injured, I think you would be guilty of the crime of libelling its strength.

But, Gentlemen, to conclude upon this head,—I maintain, that to suppress works purely speculative, provoking . ›t the people to disobedience to the laws, nor to rebellion, however much these works may differ from the Constitution, would destroy the Liberty of the Press—would trample upon the best and the surest bulwark, which defends the approaches to that stupendous erection. If, Gentlemen, to lend the works of Thomas Paine, to-day be sedition, to lend a translation of the Republic of Plato, to-morrow would be treason. Gentlemen, the works of Mr. Paine are lying before me.—I could read to you many passages to prove what I have so often stated, viz. that they are merely of a speculative nature; but, Gentlemen, you are exhausted, and so am I; and yet we have some length of field to travel over before we conclude.—For some of these passages I refer you to the late celebrated speech of Mr. Erskine,* one of the best friends the Constitution ever knew, although he is one of that proscribed and reprobated cast called the "Friends of the People!" Gentlemen, I trust that you will now be persuaded, that neither the publishing, nor the lending of a speculative political book, is *sedition*. But I now call your attention to another circumstance—the manner in which criminality is attempted to be attached to that book and to myself. Various *detached* passages are quoted from it in the Indictment. They are called "wicked," "inflammatory," and "seditious." In the sacred name of justice, will you condemn any book for *detached* passages, separated from the whole connexion? cut off from reciprocal explanation, and from which neither its general tenour nor scope can be discovered? If you do this, where is the book in which you cannot discover sedition, by dissecting its separate sentences and paragraphs? For my part, if you proceed in this manner, I do not know a more dangerous collection than the very books of holy inspiration. Only separate verse from verse, and then combine them according to your whim or pleasure, and, Gentlemen, you may make the Bible one of the most seditious and treasonable books which ever was written. But you are neither to condemn that book nor me, for those detached passages exhibited in the Indictment. You must carry along with you the *whole* works of Mr. Paine—you must scrutinise line by line, and you must pronounce upon the general context. If, after trying them by this test, you find these works provoking the people to resistance, calling them forth to arms, to subvert the Constitution, then no doubt they are seditious. But if you find the author indulging himself in nothing but philosophical and political speculation, however much your principles and his may differ, you cannot condemn him for composing these works, or me, after they were composed and published, for lending them to a *relation*.

Gentlemen, If you condemn books for being seditious, on account of passages culled from this page and from that, and artfully combined together, you have it in your power to award a proscription against universal literature. For, as I have already mentioned, there is not a

* Vide Lord Erskine's Speech, vol. ii. Defence of Paine.

single book in which, by dissecting it in this manner, sentence by sentence, and passage by passage, you may not discover immorality, blasphemy, and treason. Indeed, if the sad objects of reflection which present themselves to my mind when I contemplate the state of my country, could permit me to indulge in a vein of ridicule, I would advise you at once to lay the axe to the root of the tree, and to bring an Indictment against the Alphabet itself, because it is the source of the evil to be dreaded; its parts form the component elements of sentences and of paragraphs, which may contain the most dangerous sedition, and the most horrible treason. But this is not the time for me to indulge in the sport of humour.

Gentlemen, I shall admit, for a moment, that the passages from Mr. Paine, and the books exhibited in the Indictment, may be highly criminal; but will any person venture to say, that I lent these books for containing *such* passages, or that I particularly pointed them out, and gave them my approbation? If the Prosecutor has a right to presume that it was upon account of these passages I lent these writings, I, too, have a right to draw a contrary presumption in my favour, and to say, that if there are sentiments in the works of Mr. Paine (and many such there are) fraught with universal benevolence, inculcating universal amity and brotherhood, and of a tendency to dispel those passions and prejudices which animate and impel nation against nation, into fields of blood and of carnage, I am entitled to plead upon these passages—I have a right to say that it was the antidote, and not the poison, I recommended—and you must know that the law of this country obliges you, where opposing presumptions are of equal strength, to let the balance preponderate on the side of the accused.

Gentlemen, I shall conclude on the subject of Mr. Paine's works, by observing, that all the witnesses have uniformly sworn that I refused to recommend them; that when the matter was proposed, I said the principles contained in them might mislead the people, as they were foreign to the object of the Society, and might misguide weak minds. There is not a witness adduced by the Prosecutor who says the contrary of this; and will you agree in opinion that the charge in the Indictment of "*circulating*" and "*recommending*" these books, has the slightest shadow of support? Gentlemen, I will tell you the reason why I did not recommend Mr. Paine's books to the Societies in Scotland, and why I declared them foreign to their purpose. Mr. Paine is a Republican, and the spirit of Republicanism breathes through all his writings. This is his darling system. Whereas the object of these Societies was, by Constitutional means, to procure a reformation in the Constitution, and not a revolution, which implied its destruction. In other words, their object was to have their long lost rights restored, but not by the assumption of new rights derived from a different system. Gentlemen, I am happy to find the people of Scotland rapidly advancing to a true sense of their Constitutional liberties—to see them *demanding* to have the Constitution restored to its genuine principles, in order that they may behold their liberties confirmed, and their happiness established. That they should advance

with more ardour in this cause, it was necessary that they should *know* the Constitution, what it had been in its vigour, and what it now is in its decay, by the corruption of men and of ages. And pray what did I do to effectuate these legal and enviable objects? I did not present to the people the splendid fabrics of ancient or of modern Republics. I wished them to keep their eyes confined at home, to repair their own mansion, rather than pull it down, and not to expose themselves to the inconveniences and dangers of building upon new plans, the advantages or disadvantages of which could only be known by the uncertain experience of future ages. All the witnesses who speak of my conduct in the Societies, tell you that I recommended none but Constitutional measures—and that the only book which I recommended to them was Henry's History of England, the best calculated, by its accuracy and plainness, to give them insight into the nature and progress of the Constitution.

Gentlemen, Having already explained the principle on which I refused to recommend the works of Mr. Paine; I again ask, was it ever before held criminal in an author to publish what speculative systems of Government he pleased, provided he confined himself to mere speculation, and did not advance forth to the field of action? Was it a crime of Plato, under the Athenian Republic, to compose his beautiful system? Was it high treason in Cicero, under the Roman Commonwealth, to write those renowned works which have been lost in the darkness of the Gothic night, and of which a few fragments could only be found when the morning of letters began to dawn upon Europe? Was Sir Thomas More led forth to the scaffold for composing his Utopia? Harrington proscribed for his Oceana? Or Hume expelled for his Commonwealth? No, Gentlemen, these authors indulged themselves in a liberty, which, if we are now to be deprived of, must leave this land in darkness and despair, since the attempt at amendment and reformation will be for ever precluded.

Gentlemen, I now close my observations on the subject of Mr. Paine's works, by calling you to remember that it was only a single copy which I lent; and the circumstances attending which, admitting the book to be as seditious and as treasonable as can be imagined, utterly excludes the idea of a "*felonious*" circulation on my part. You are the first Jury in Scotland before whom Mr. Paine's works have yet been brought. I trust you will act in such a manner as to do honour to yourselves, in doing justice to him and to me—that you will not attempt to annihilate political science—that, in this country, where our chief glory has arisen from literature, you will not limit her researches, but that you will rather indulge her in her unbounded flight into every region where the materials of human happiness and human improvement can be collected. *Finally*, I must tell you, that you are not bound by what any Jury has done in England—you are bound by the law of Scotland. But even the decisions in England have lost the respect due to them, although they were to be held out as precedents; for we have seen Juries one day condemning the author

and the publishers, and on t . succeeding day we have seen other Juries pronounce a verdict of acquittal.

Gentlemen, The next witness is Ann Fisher, a late servant in my father's house. Her evidence comes forward to you with peculiar distinction—caressed by the Prosecutor, and complimented by the Court. I will soon show you, Gentlemen, that she has but few pretensions to that accuracy of which the Lord Advocate spoke in such high terms,—and that her memory possesses a singular quality—retentive to whatever may militate against me—but hesitating and confused to whatever may seem in my favour. What this domestic, and well-tutored spy, has given in evidence against me, fills my mind with little concern. On the contrary, it affords me much satisfaction to find, that, when I was surrounded in the place where I expected most security—where all suspicion was lulled asleep, my conduct was so guarded. What do I say? —guarded!—Innocence, Gentlemen, has no need to be on the watch.

Even malice itself cannot condemn my conduct. But before I proceed to read her evidence from my notes, let me solemnly caution you against the dangerous precedent of giving credibility to witnesses of this kind, under accusations of this nature. The crime of sedition, if you attend to its essence, never can be committed within the walls of a private house. It supposes the highest publicity—the convocation of many individuals together. But if power shall say that words spoken in an unguarded moment within the sacred walls of a family, amount to this crime, what will follow? Not those with whom you have acted in your political life, and who, with the impression of the oath of God upon them, can best tell the truth—not those whom you may have admitted to your friendship, and to your confidence, and who best know the secrets of your soul; but the meanest of your domestics, who could hardly approach your presence, even in their menial duties, if the expression may be used, to whom the members of a family are almost unknown:—these!—these!—the meanest and the lowest, will be brought forward to swear away your property, your reputation, and your life! And such, Gentlemen, is this witness, who is adduced against me with such parade. Oh, Gentlemen, beware how you sanctify this shameful proceeding. It is not me you wound alone, but you destroy the confidence which subsists between man and man—you lead, by your own hands, to the fire-sides of your children and your dearest relations, the fiends of suspicion and of danger: and you for ever put an end to that reciprocity of communication, which enlivens and endears domestic society. But let us hear what this witness has to say. I will read you from my notes her evidence. If I have erred in taking it down, I will of course be corrected. (Here Mr. Muir read the evidence of Ann Fisher.) Gentlemen, the testimony of this witness seems to relate to two of the principal charges in the indictment. The *first*, to my having made speeches in public societies, vilifying the King and Constitution; the *second*, to my having distributed and recommended seditious books, viz., Mr. Paine—the Patriot, &c. Under these two different articles let us examine the testimony of this witness.

Gentlemen, The Prosecutor has told you that he could adduce any

thing against me he pleased, under the *generality of* the term sedition, even though it should not be specified in the libel. The Court has permitted him to do so: and in the case of this witness, you may see the dangerous effect of such doctrine. Gentlemen, I am accused of making seditious harangues in *public*, but this servant girl is adduced to swear to what she says, she may have heard in *private*, when she was probably instructed to take her watch, and mark to destruction those who fed her. But what is the dreadful language she has heard me use, even in my unguarded moments? I will repeat what she says—I will recall to your remembrance her express words, which were—"that if every body had a vote, I would be member for Calder—that members of Parliament would have 30s. or 40s. a day, and in that case, there would be none but honest men to keep the Constitution clear." Gentlemen, you remember how the Public Prosecutor expatiated on these words of this witness. After labouring long in vain, he now fancied he had got something against me. I smiled at the indecency of his exultation at this part of the proceeding, but next moment I pitied him when I reflected he was a lawyer and chief Counsel for the Crown in Scotland. Here, said the Prosecutor, "You see the cloven foot!—you see French principles manifested!—here you discover the whole tincture of his soul.—Members of Parliament to have 30s. or 40s. a day for their attendance!—to be honest men, and to keep the Constitution clear! Is not this evidence that he means to introduce in place of our House of Commons a National Convention, on French principles, and according to French forms!"

Gentlemen, Sorry am I to see the ignorance of this Lord Advocate of Scotland. Is there a man who has opened the volume of the History of our Constitution, who does not know, that until a very late period indeed, when corruption glided in, and tainted and poisoned it,—Members of Parliament received their wages from the hands of the people alone? Oh, how I speak it with joy when I review the past—with sorrow when I contemplate the present. Our virtuous ancestors would have scorned to have received the price of their attendance from any other hands, than from the hands of the people. Then, indeed, the Constitution possessed all its energies. Then, indeed, it towered in the strength of age, but with the bloom of youth. The people delegated as their representatives, none but men of tried virtue and patriotism, in whom they could repose the most unbounded confidence. Look back, I entreat you, to all the great and good men whom English history records. Turn your eyes to the Hampdens—to the Sidneys—to the Marvilles, of former times—to these men——but I stop. Let the Lord Advocate pronounce their eulogium by his invective.

Fisher proceeds to state, that she has heard me say, that France was the most flourishing nation in the world, as they had abolished tyranny and got a free Government;—that the Constitution of this country was very good, but that many abuses had crept in which required a thorough reform;—therefore, Gentlemen, even in my most unguarded hours, this domestic spy cannot, by her evidence, support a tittle of the indictment, where it charges me with vilifying the King

and Constitution. Of her idle story of what I said concerning Courts of Justice,—that they needed a Reform, and that this Court in particular got their money for nothing but pronouncing sentence of death upon poor creatures, &c. I disdain to take notice; only you will discover her exquisite art. This day I am tried before this Court, and she supposes that by inventing, and throwing in a circumstance of this kind, in order to irritate the Judges against me, she will more completely execute the wretched job she has undertaken to perform. Were there not more servants in the house, who had infinitely better opportunities to hear my conversation? and must she, the lowest of them all, with whom she cannot pretend I had ever two minutes' conversation, be singled out and pitched upon for this drudgery?

She next depones, that she heard me say that a republican form of Government was the best; but then she *qualifies* it by saying, that when I spoke of this country, I never deviated from the Constitution, but said, that a limited monarchy, under proper restrictions, was the best adapted to its interests.

Gentlemen, The next article of sedition to which she depones, is of the most extraordinary kind, viz. that I had sent her to employ an organist, on the streets of Glasgow, to play the French tune, *Ca Ira*. What! Gentlemen! was a tune like this to lighten up the flames of civil discord, and to be the forerunner of this most terrible revolution? Have you read the words of that most popular song—and can you discover a single allusion in them to the state of England? Gentlemen, England has always cherished Freedom; and shall it be deemed criminal in me to listen to the effusions of joy poured out by a neighbouring people, on obtaining that first of human blessings, which always constituted our peculiar distinction?

But I know it well. The word *Freedom* is soon to be proscribed from our language;—it carries alarm and sedition in the sound. If I had caused to be recited one of those noble choruses of the Grecian drama, in which, with the enthusiasm of Liberty, the glories of the Republics of Athens or of Sparta were displayed in language more than mortal, my offence would have been deemed the same with that of amusing myself by hearing the national song of France. If it had been possible for me to have caused to be sung upon the streets of Glasgow one of the Psalms of the Hebrews, in the original language, in which the triumphs of the people and the destruction of tyrants are recorded in a strain of the highest poetical inspiration, the criminality would have been the same with that of listening to *Ca Ira*.*

Gentlemen, Let me abandon the subject. My political career has neither been obscure nor inglorious—it has undergone the severest scrutiny which ever fell to the lot of man—and after every engine has been employed—after heaven and earth have been moved, the tremen-

* We wonder what Lord Advocate Dundas would have said to the patriotic song of Burns, "Scots wha hae wi' Wallace bled?" We think he would have called the following lines wicked and treasonable.

"Lay the proud usurpers low!
Tyrants fall in every foe!
Liberty's in every blow,
Forward! let us do or die!"

dous charge of sedition is, after all, to be supported by the testimony of a domestic spy, swearing, not to my serious occupation, but to the amusement of an idle hour, in listening to a foreign tune!! But let us next attend to the evidence of Fisher, as far as it relates to "seditious *publications*." She swears that I used to recommend to a great many country people (who came to my father's shop) to purchase and to read the works of Mr. Paine. But, Gentlemen, in the "number of country people," she can only specify *one*, viz. John Barclay, and when you examine his evidence, you will see he gives her the flattest contradiction. She swore that she bought at two different times for my uncle, Alexander Muir, at my request, a copy of the first part, and a copy of the second part of the Rights of Man. Can you suppose that if my intentions had been "felonious" I would have introduced such writings into my own family? Can you imagine that I would have wished to involve in the conflagration of my country my nearest relations, to whose property I may eventually succeed. Why is Alexander Muir not brought forward as a witness? Certain it is, that he was closely interrogated before the inquisition held by Mr. Sheriff Honyman. But the Lord Advocate says that his feelings would not permit him to examine the uncle against the nephew.—Goodness ever to be remembered and extolled! But, my Lord, (turning to the Lord Advocate,) did you not advise and direct the whole proceedings against me, and will you have the effrontery to maintain that Alexander Muir was not dragged like a felon from his own home by the myrmidons of power,—carried before your friend Honyman,—and that every art was employed to wring from him every domestic secret?

Speak, then, to us of your humanity!—Aye! Continue to speak to us of your feelings!

Gentlemen, Fisher next swears that I *pressed* John Muir to purchase Paine's works—that he was prevailed upon, and that she was sent to purchase them. Now you heard the evidence of this man in express contradiction to this witness. She next tells you that I advised another domestic, Wilson my hair-dresser, to purchase Paine's works and keep them in his shop, "in order to enlighten the people," and you heard Wilson express himself far otherwise. She speaks of carrying some paper which she thinks was a Declaration of Rights to a printing office to be corrected.—Every thing in her evidence is made to tally with the Indictment. I am there accused of circulating a paper entitled a Declaration of Rights by the Friends of Reform in Paisley; and this respectable personage, so highly complimented by the Court, must likewise swear something concerning it. Yet her tenacious memory utterly fails her here. She thinks she can only remember what the title was, but nothing more. She knows nothing of the substance of the writing—but her evidence is to give a colour to the allegation of my having circulated that paper from Paisley, and to furnish ground for insinuating that I was the author of it.

Gentlemen, The witness next swears to a fact which must rouse your keenest indignation. Vigilant has this family-spy been in the course of her duty. She tells you what books she has seen on my

table, &c. Gentlemen, from this moment lock up your libraries. If they are extensive as you have heard mine is, there is no crime in the whole decalogue, of which by the testimony of your own servants, you may not be found guilty. The possession of Plato, of Harrington, or of Hume, will mark you down for Republicans. The misfortune of having the Koran of Mahomet will cause the shipwreck of your faith, and stigmatize you as the disciples of the conqueror of Mecca. Well do I congratulate the Lord Advocate of Scotland. He has discovered a new region in the sphere of criminality—he will not merely confine himself to one voyage of discovery, but, along with his associates, he will make many voyages to this fertile land, and return home loaded with many valuable cargoes. But seriousness becomes this place. Can it be believed, that in the close of the 18th century,—that this night,—the servants of a man should be examined concerning what particular books he may have had in his house, and that the proof of possession of particular books may ruin his reputation—sweep away his property—and deprive him of his life! Gentlemen, if you possess the common feelings of men, every sentiment of indignation must be excited, not against this witness, for she is rather to be pitied, but against the manner in which this crime of sedition has been attempted to be proved.

Gentlemen, The libel charges me with "*feloniously* circulating a Dialogue between the Governors and the Governed," extracted from the Ruins of Volney. This Dialogue is narrated in the Indictment, and it is charged to be felonious and seditious. There is not a word in this Dialogue which is not true. Alas! in colours but too faithful, it delineates the mournful history of six thousand years,—the crimes of despots, and the artifices of impostors, to subjugate and to blind the people. It is purely abstracted. It is entirely speculative. To no particular nation, much less to England, does it allude—if to any it must be to France under the ancient system. Yet this Dialogue is libelled as seditious and inflammatory. The truth is, the crime of sedition *must* be brought home against me, and the possession of *any* book, as well as that of Volney, might be employed to substantiate it. Let us hear what the witness says concerning the "*felonious*" circulation. She heard me read it in presence of my mother, sister, and some other people—that I said it was very clever, and done by one of the first wits in France. Who were those "other people," that were in company with my mother and sister, when I read it? Her accuracy, so much extolled by the Court, again totally fails her here. But the propagation of sedition must not be confined to a mother and a sister,—it must have a wider range: "*other people present!*" and founding upon his beloved generality, the Prosecutor has reason to argue that there might have been a full company—a numerous meeting—nay, an immense congregation!

Gentlemen, You have heard the testimony of Fisher, and are these the arts by which I am to fall? I again say, that if you receive such testimony, you for ever destroy domestic society—you blast the sweets of family confidence. And is it not sufficient to weep over

public calamities, without thinking, that when we retire to our own homes, we must be obliged to confine ourselves in dismal solitude, guarded by suspicion and by danger, where no kindred affections can enter, and where no reciprocal consolation can be admitted?

Gentlemen, I hasten over the evidence of the remaining witnesses against me. I am overcome by the exertions of this day; and you must be greatly exhausted.

The next is the evidence of Thomas Wilson, my hairdresser, and he is brought to bring up the rear of Fisher's testimony. He deponed, that I asked him if he had bought a copy of Paine's works, and that I advised him to get a copy of them, as a barber's shop was a good place to read in. Does this confirm the testimony of Fisher, who says I *desired* him to buy that work, and "to keep it in his shop in order to enlighten the people?" Mark the art of Fisher. How strongly she paints what might seem to strike against me—"*to enlighten the people!*" But does Wilson concur in this? No. He tells you, that he bought a copy of the Address to the Addressers; but *not* by my advice. He even recollects the levity of conversation. An *old* man from the country came in while he was dressing me. He remembers I said, that this old man was a great reformer. If I ever said so, I wish it may not have been in jest, but in earnest, and that the fact with regard to the man was true; for, Gentlemen, I know of none who should be greater reformers of themselves and of others, than those who are standing on the brink of the grave, or hastening to eternity. But I am afraid that this witness only remembers a piece of unmeaning gaiety; for he adds, the old man said, "I was taunting him."

Gentlemen, The conclusion of the evidence of Wilson affords me much consolation. It is a proof of the innocency of my private life, in moments when I could not possibly think of the affectation of integrity. He swears that he has always heard me say, that I would "maintain the Constitution;" and that I wished for "peace and good order," and "good morals among the people;" and that he "never heard me speak against the King."

The next testimony is that of John Muir. He tells you, that he had a conversation with me in September last about Paine's book in my father's house; that he asked the loan of it from me; that I told him I had it not. Does this resemble the conduct of a man accused of distributing these books to all and sundry, and scattering them over every portion of the land? He says, I mentioned I would send a servant who would get it for him; that a servant girl accordingly went and got it. Does not this completely confute the testimony of Fisher, who affirms that I much "pressed" this man to purchase that book? since he tells you, that he himself asked the loan of it? Is not this a complete contradiction of her testimony?

The next witness is John Barclay, that old and venerable person, whom you saw adduced as a witness by the Prosecutor, and who informs you, that we were Elders in the same parish—the parish of Calder, in which the lands of my father are situated. Gentlemen,

the Lord Advocate, in speaking of this virtuous and venerable old man, exclaimed with insolent contempt, "Such men as *these* are the companions, and *such* men as *these* are the friends of Mr. Muir!" Yes; I tell the Lord Advocate—I tell the Aristocracy of Scotland—I glory more in the friendship of such an old, poor, and virtuous man, than in the friendship of the highest titled Peer, who derives the sources of his guilty grandeur from the calamities of the people;—who wrings out a splendid, but a miserable revenue, from their sorrow and distress,—from their tears,—and from their blood,—which he squanders in dissipation,—to the ruin of private virtue,—and to the contamination of public morals.

Let us see, then, what Mr. Barclay says against me;—that "he asked my opinion concerning Paine's books,"—that I told him he might purchase them if he chose, as they were printed,—but that I afterwards said "they were not books for us." Does Mr. Barclay's evidence support the *criminal* charge in the libel, of my *advising* people to purchase seditious books, and of my *circulating* them over the country?—Does not Mr. Barclay's evidence shew that I never recommended Mr. Paine's works, and said that they were not works for us, who were simply engaged in the cause of a Parliamentary and Constitutional Reform? Gentlemen, is there a single witness brought forward by the Prosecutor, who has in the smallest degree stated any conversation of mine which was unconstitutional? Hear what Mr. Barclay says:—he was frequently with me, and in my library, from which he borrowed books;—that he had many conversations with me, and heard me say, that the Constitution of this country was an excellent one:—that I praised the King, and always spoke of order, regularity, and obedience to the ruling powers. In short, Gentlemen, the best of the witnesses for the Prosecutor use the same uniform language,—attest that neither in public nor in private, a single expression ever dropped from me, which the most violent associator could construe into guilt.

The last witness of whom I shall take notice is William Muir, the person whose religious principles at first induced him rather to suffer, according to the elegant expression of the Lord Advocate, *eternal* imprisonment, than to take the oath, until his scruples were removed by the Rev. Mr. Dun. He swears, that in my father's house, at Huntershill, I gave him eleven numbers of the Patriot, and a copy of the Political Progress. From these numbers of the Patriot several passages are quoted in the indictment. Of the Political Progress there is no mention made; and I maintain that every passage in the Patriot, quoted in the libel, is highly constitutional. The sentiments advanced in them may not sound musically sweet to the ears of corruption. They call upon the people to arise and vindicate the purity of the Constitution—to vindicate their long lost rights; and, Gentlemen, if my feeble voice could extend to the remotest corners of Scotland, I should resound the same sentiment in the same language. These numbers of the Patriot speak to you concerning Septennial Parliaments. And I say, that the Act which converted Triennial

Parliaments into Septennial, violated our Constitution, tore the charter of our national liberties, and paved the way for the inroads of a frightful despotism. But this witness concurs with all the preceding witnesses in regard to my conduct and principles. He swears that he does not remember to have heard me speak against Government;—that I did not advise unconstitutional measures, and that he heard me tell how Old Sarum was represented. Old Sarum represented!—Do not the friends of the Constitution weep, and do not the enemies of the Constitution smile, when they hear of *such* representation?

Gentlemen, Before I speak to the third article of accusation, the reading in the Convention the Address of the Society of United Irishmen of Dublin, permit me to make one observation on the manner in which the Prosecutor spoke of the papers found in my custody. Do they correspond with the view which he presented of them? Are they the documents of correspondence with foreign or internal foes? No, Gentlemen. Among my papers there is not one which can be construed into any thing like guilt. They consist of pamphlets, unconnected with the politics of the day, and of the various publications of a Society, pure and untainted in its principles, of which I have the honour to be a member. But every thing must be ransacked to heap crimination upon my head. One of the letters which I had undertaken to deliver in Scotland, is addressed to the Rev. Fische Palmer. "Mark!" cries the Lord Advocate, "the company which this man keeps. Who (says he,) is Mr. Palmer, but a person who is likewise indicted for sedition, and who is to be tried in a few days at Perth." Unheard of cruelty—unexampled insolence! What! before this Court—this Jury—this audience—do you (looking in the face of the Lord Advocate,) attempt to prejudicate and condemn Mr. Palmer in his absence, undefended, and without any possibility of defending himself? But, exclaims the Lord Advocate, the "seal upon the letter" is a proof of the most atrocious guilt. Gentlemen, what is it? Horrible to tell! it is the Cap of Liberty! supported upon a spear, with the words *Ca Ira* above! Gentlemen, all this is perfectly consistent. When you attempt to banish the *substance* of freedom, the *shadow* must follow! When a new coinage takes place his Lordship has given a most excellent hint. The officers of the Mint will surely profit by the lesson, and they will no more scatter sedition throughout the land, by impressing upon our halfpennies the figure of Britannia, with a spear in her hand, mounted with the Cap of Liberty! But I am ashamed to enter into such trifles.

Gentlemen, I now come to the last charge—that of having read in the Convention of Delegates, the Address from the Society of United Irishmen in Dublin. Gentlemen, I admit the fact, and I glory in the admission. The Prosecutor has represented that Society as a gang of mean and nefarious conspirators; and their diploma* of my admission into their number, as an aggravation of my crime. Gentlemen, let me tell the Lord Advocate of Scotland, that that Society stands too

* Copied in Appendix.

high to be affected by his invective, or to require the aid of my defence. I am a member of that Society; and in the last moments of my life to have been so, shall be my honour and my pride. The Lord Advocate has represented to you in general terms, that that Address amounts almost to Treason, but he durst not attempt to point out in his speech, a single passage which could support the aspersion. I maintain that every line of that Address is strictly constitutional. You must carry the *whole* of it along with you, and not judge of particular passages scandalously mutilated in the Indictment. Gentlemen, I will read over many passages of this Address, not merely because they are the production of an immortal pen, but because every word is regulated by the spirit of the Constitution. (Here Mr. Muir read the Address, which we have published at length in the Appendix.)

Gentlemen, The Lord Advocate, however, has represented the authors of this Address, as the meanest of mankind, and has expressly called them "*infamous wretches* who had fled from the punishment due to their crimes." What slander!—what falsehood—unfounded slander! Has Doctor Drennan—has Mr. Hamilton Rowan, whose names are at the head of this Address, fled from crimes and from punishment?—and they are "infamous wretches!" Gentlemen, if ever after ages shall hear of my name, I wish it may be recorded, that to these men I had the happiness of being known. To be honoured by the notice of Dr. Drennan is an ambition to which, in the most exalted station of life, I would fondly aspire. To have it said that I was the friend of Mr. Hamilton Rowan, I would consider as the passport to the only acquaintances whom I value,—those who found their claim to distinction upon the only true basis, I mean their own virtues. Mr. Rowan is indeed indicted to stand trial in Ireland upon a charge similar to my own. He will boldly meet his accusation—and let me say along with those who know him, that although it is impossible to add new lustre to his character, yet as he has often come forward in the cause of individual humanity, he will display himself upon that occasion, the firm,—the intrepid,—and I hope the successful champion of the liberties of his native country.*

Gentlemen, I hasten to a conclusion. Much yet remains to say. But after, upon my part, the unremitted exertion of sixteen hours, I feel myself nearly exhausted.

Look once more, I entreat you, to the Indictment, and compare it with the evidence.

The *first* charge against me is, that, in public speeches, I vilified the King and Constitution. All the witnesses adduced, attest, that both in public and in private, even in my most unguarded moments, my language was always respectful to the King, and that I always recommended the Constitution.

The *second* charge against me is, that of advising the people to read seditious books, and of distributing inflammatory publications among them. And you hear it proved, by the almost unanimous voice of

* See quotation from the eloquent Speech of Curran in Defence of Mr. Rowan, Appendix, in which allusion is made to Mr. Muir.

the witnesses for the Crown, that I refused to recommend my books, and that the only one which I recommended was Dr. Henry's History of England. You will not forget the circumstances in which I lent Freeland a copy of Paine's works; nor will you forget the manner in which the writings of that man were introduced in conversation with Wilson, Muir, and Barclay. With regard to other books and pamphlets mentioned in the libel, there is not any proof. Wm. Muir has deponed, that I gave him one or two numbers of the Patriot, and some other pamphlets, whose titles I cannot remember. Gentlemen, I frankly acknowledge that I gave him those numbers of the Patriot; and if I were not now entirely overcome by fatigue, I could demonstrate to you, that, in those numbers, there is not a single sentiment unconstitutional or seditious.

I am accused of reading the Irish Address in the Convention, and of moving a solemn answer in return. That Address is "neither "seditious, wicked, nor inflammatory." There is not a sentence in it which I have not defended in your presence. Gentlemen, you neither can do justice to me, nor to the country, if you condemn these different publications, upon account of the scandalously mutilated extracts from them in the libel. You must carry the whole of them along with you from this place. It is not upon detached passages you are to judge; but you must decide upon the whole.

Gentlemen of the Jury, This is perhaps the last time that I shall address my country. I have explored the tenour of my past life. Nothing shall tear from me the record of my former days. The enemies of Reform have scrutinised, in a manner hitherto unexampled in Scotland, every action I may have performed—every word I may have uttered—of crimes most foul and horrible have I been accused—of attempting to rear the standard of civil war—to plunge this land in blood—and to cover it with desolation. At every step as the evidence of the Crown advanced, my innocency has brightened. So far from inflaming the minds of men to sedition and to outrage, all the witnesses have concurred that my only anxiety was to impress upon them the necessity of peace, good order, and good morals. What, then, has been my crime? Not the lending to a relation a copy of Mr. Paine's works—not the giving away to another a few numbers of an innocent and constitutional publication—but my crime is *for having dared to be, according to the measure of my feeble abilities, a strenuous and active advocate for an equal Representation of the People in the House of the People*—for having dared to accomplish a measure, by legal means, which was to diminish the weight of their taxes, and to put an end to the profusion of their blood. Gentlemen, from my infancy to this moment, I have devoted myself to the cause of the People. IT IS A GOOD CAUSE—IT SHALL ULTIMATELY PREVAIL—IT SHALL FINALLY TRIUMPH. Say, then, openly, in your verdict, if you do condemn me, which, I presume, you will not—that it is for my attachment to this cause alone—and not for those vain and wretched pretexts stated in the Indictment, intended only to colour and disguise the real motives of my accusation.

Gentlemen, The time *will* come, when men must stand or fall by their actions—when all human pageantry shall cease—when the hearts of all shall be laid open. If you regard your most important interests—if you wish that your conscience should whisper to you words of consolation, or speak to you in the terrible language of remorse, weigh well the verdict you are to pronounce. As for me, I am careless and indifferent to my fate. I can look danger, and I can look death in the face, for I am shielded by the consciousness of my own rectitude—I may be condemned to languish in the recesses of a dungeon—I may be doomed to ascend the scaffold. Nothing can deprive me of the recollection of the past,—nothing can destroy my inward peace of mind, arising from the remembrance of having discharged my duty."

When Mr. Muir sat down, an unanimous burst of applause was expressed by the audience. (He spoke nearly three hours—commenced his address at 10 at night, and finished about 1 on Saturday morning.)

The *Lord Justice Clerk* shortly summed up the evidence. His Lordship said that the Indictment was the longest he had ever seen; but it was not necessary to prove the whole, in order to find the pannel guilty, for the Jury had only to look at the concluding sentence of the Indictment, from which it was plain, that if any one part of the libel was proven, it established the guilt of the pannel the same as if the whole was substantiated.

Now (said his Lordship), this is the question for consideration: Is the pannel guilty of sedition, or is he not? Now, before this question can be answered, two things must be attended to that require no proof. *First*, That the British Constitution is the best that ever was since the creation of the world, and it is not possible to make it better. For is not every man secure?—does not every man reap the fruits of his own industry, and sit safely under his own fig-tree? The *next* circumstance is, that there was a spirit of sedition in this country last winter, which made every good man very uneasy. And his Lordship coincided in opinion with the master of the Grammar-school of Glasgow, who told Mr. Muir that he thought proposing a Reform was very ill-timed. Yet Mr. Muir had at that time gone about among ignorant country people, making them forget their work, and told them that a Reform was absolutely necessary for preserving their liberty, which, if it had not been for him, they would never have thought was in danger. His Lordship did not doubt that this would appear to them, as it did to him, to be sedition.

The next thing to be attended to was the outlawry. Running away from justice—*that* was a mark of guilt. And what could he do in France at that period?—pretending to be an ambassador to a foreign country, without lawful authority, *that* was rebellion; and he pretends to have had influence with those wretches, the leading men there. And what kind of folks were they? His Lordship said, *he never liked the French all his days, but now he hated them.*

The Pannel's haranguing such multitudes of ignorant weavers,

about their grievances, might have been attended with the worst consequences to the peace of the nation, and the safety of our glorious Constitution.

Mr. Muir might have known, that no attention could be paid to such a rabble. What right had they to representation? He could have told them that the Parliament would never listen to their petition. How could they think of it? A Government in every country should be just like a Corporation,* and in this country it is made up of the landed interest which alone has a right to be represented. As for the rabble, who have nothing but personal property, what hold has the nation of them? What security for the payment of their taxes? They may pack up all their property on their backs, and leave the country in the twinkling of an eye, but landed property cannot be removed.

The tendency of the Pannel's conduct was plainly to promote a spirit of revolt, and if what was demanded was not given, to take it by force. His Lordship had not the smallest doubt that the Jury were like himself, convinced of the Pannel's guilt, and desired them to return such verdict as would do them honour.

The Court retired at two o'clock on Saturday morning, and met again at 12 o'clock of the same day, when the Jury returned a *verdict* unanimously finding the Pannel "GUILTY *of the crimes libelled.*"

The verdict being recorded, the Lord Justice Clerk addressed the Jury, and said that this trial had been of the greatest importance. He was happy that they had bestowed so much attention upon it, and informed them that the Court highly approved of the verdict they had given. He then desired their Lordships to state what punishment should be inflicted, which they did to the following purport.

*Lord Henderland*† observed, that the alarming situation in which this country was, during the course of last winter, gave uneasiness to all thinking men. His Lordship said, that he now arrived at the most disagreeable part of the duty incumbent upon him, which was, to fix the punishment due to the crime of which the pannel was found guilty. The Indictment contained a charge of sedition, exciting a spirit of discontent among the inferior classes of people, and an attack against the glorious Constitution of this country. The Jury, by the verdict which they had returned, and to which the Court had alone recourse, had found the pannel guilty; and it was their Lordships' duty only, now to affix the punishment due to the offence. His Lordship said he would not dwell upon the evil consequences of the crimes committed by the prisoner. The melancholy example of a neighbouring country, which would for ever stain the page of history, rendered it unnecessary for him to recapitulate the circumstances of the case. In that country, the consequences of such measures have produced every kind of violence, rapine, and murder. There appeared, he said, to have been in this country a regular plan of seditious measures. The indecent applause which was given to Mr. Muir last

* Horace Twiss, Sir Charles Wetherel, and Co. must have been studying his Lordship lately!—Excellent worthies!

† "Clerk of the Pipe" for Scotland.

night, at the conclusion of his defence, within these walls, unknown to that High Court, and inconsistent with the solemnity which ought to pervade the administration of justice, and which was insulting to the laws and dignity of that Court, proved to him that the spirit of sedition had not as yet subsided. He would not, he said, seek to aggravate the offence committed by the pannel, by the misconduct of others, in order to increase the punishment. The punishment to be inflicted is arbitrary, of which there is a variety. Banishment, he observed, would be improper, as it would only be sending to another country, a man, where he might have the opportunity of exciting the same spirit of discontent, and sowing with a plentiful hand sedition. Whipping was too severe and disgraceful, the more especially to a man who had bore his character and rank in life. And imprisonment, he considered, would be but a temporary punishment, when the criminal would be again let loose, and so again disturb the happiness of the people. There remains but one punishment in our law, and it wrung his very heart to mention it, viz. *transportation*. It was a duty his Lordship considered he owed to his countrymen to pronounce it, in the situation in which he sat, as the punishment due to the pannel's crimes. His Lordship observed, it was extraordinary that a gentleman of his description, of his profession, and of the talents he possessed, should be guilty of a crime deserving such a punishment; but he saw no alternative; for what security could we have against his future operations, but a removal from his country, to a place where he could do no further harm? His Lordship was therefore of opinion, that the pannel should be re-committed to prison, there to remain till a proper opportunity should offer for transporting him to such place as his Majesty, with the advice of his Privy Council, might appoint, for the space of fourteen years from the date of the sentence; and that he should not return within that period, under the pain of death.

*Lord Swinton.** The crime with which the pannel is, by a Jury of his country, found guilty, is sedition. It is a generic crime—defined by our lawyers to be a commotion of the people without authority, and of exciting others to such commotion against the public welfare. This crime, he observed, consisted of many gradations, and might have run from a petty mob about wages, even to high treason. He thought the punishment should be adapted to the crime. The question, he said, then was, what was the degree of the crime the pannel has been guilty of?—and that was to be discovered from the libel, of which he has been found guilty by the unanimous verdict of the Jury. It appeared to his Lordship to be a crime of the most heinous kind, and there was scarcely a distinction between it and high treason, as by the dissolution of the social compact, it made way for, and so might be said to include every sort of crime, murder, robbery, rapine, fire-raising, in short, every species of wrong, public and private. This, he observed, was no theoretical reasoning, for we had it exemplified before our eyes in the present state of France, where, under

* See Pension List of Scotland for "Swinton."

the pretence of asserting liberty, the worst sort of tyranny was established, and all the loyal and moral ties which bind mankind were broken. Nay, shameful to tell, even religion itself was laid aside, and publicly disavowed by the National Convention. And in this country certain wretched persons had assumed to themselves, most falsely and insidiously, the respectable name of Friends of the People and of Reform, although they deserved the very opposite denomination; by which means they have misled and drawn after them a great number of well-meaning, though simple and unwary people. If punishment adequate to the crime were to be sought for, there could be found no punishment in our law sufficient for the crime in the present case, now that TORTURE is happily abolished.*

By the Roman law, which is held to be our common law where there is no statute, the punishment was various, and transportation was among the mildest mentioned. Paulus L. 38, Dig. *de Pœnis*, writes, *Actores seditionis et tumultus, populo concitato, pro qualitate dignitatis, aut in furcam tolluntur, aut bestiis objiciuntur, aut in insulam deportantur.* We have chosen the mildest of these punishments. By the *Codex*, lib. 9, t. 30, *de seditiosis et his qui plebem contra rempublicam audent collegere*, l. 1 and 2, such persons are subjected *ad mulctam gravissimam.* Baldus writes, *Provocans tumultum et clamorem in populo, debet mori, pœna seditionis.* And by a Constitution of the Emperor Leo, *Subdandos autem pœnis eis quas de seditionis et tumultus auctoribus vetustissima decreta sanxerint.*

The sole object of punishment among us is only to deter others from committing the like crime in time coming; therefore, the punishment should be made equal to the crime. All that is necessary is, that it serve as an example and terror to others, in time coming, against a repetition of the like offence. In the present case, he thought that transportation was the lightest punishment that could be assigned, and that for the space of fourteen years.

*Lord Dunsinnan* concurred.

*Lord Abercrombie.* His Lordship did not think it necessary to say much as to the enormity of the crime, after what had been already said. By our law it might have amounted to treason, and, even as the law now stands, it came very near it. He observed that Mr. Muir, last night, when conducting his defence, had stated, and which was marked, and it had great weight with him, "That the people should be cautious, and by all manner of means avoid tumults and disorders; for, through time, the mass of the people would bring about a revolution." (Here Mr. Muir rose and said, "*I deny it, my Lord—it is totally false.*") If any thing could add to the improper nature of the pannel's defence, it was his pretended mission to France, and the happiness he expressed in the circle of acquaintance he had there. It was evident, said his Lordship, that his feelings did too much accord with the feelings of those monsters. His Lordship

* The use of *Torture* was only put an end to, in Scotland, by an Act of the British Parliament in 1708.

coincided with the rest of their Lordships, in regard to the punishment which they thought Mr. Muir deserved.

*Lord Justice Clerk.* His Lordship said he was considerably affected to see the pannel tried for sedition, a man who had got a liberal education—was member of a respectable society—possessed considerable talents—and had sustained a respectable character. His Lordship considered the very lowest species of this crime as heinous, and that it was aggravated according to the object in view. Here the object was important; for it was creating in the lower classes of people disloyalty and dissatisfaction to Government, and this amounting to the highest sort of sedition is bordering on treason, and a little more would have made the pannel stand trial for his life.

His Lordship agreed in the propriety of the proposed punishment, and he observed, that the indecent applause which was given the pannel last night convinced him, that a spirit of discontent still lurked in the minds of the people, and that it would be dangerous to allow him to remain in this country. His Lordship said, this circumstance had no little weight with him, when considering of the punishment Mr. Muir deserved. He never had a doubt but transportation was the proper punishment for such a crime, but he only hesitated whether it should be *for life*, or for the term of fourteen years.—The latter he preferred, and he hoped the pannel would reflect on his past conduct, and see the impropriety which he had committed; and that if he should be again restored to his country, he might still have an opportunity of showing himself to be a good member of that Constitution which he seemed to despise so much.

After his Lordship had delivered his opinion, and during the time the sentence was recording, Mr. Muir rose and said:—

"My Lords, *I have only a few words to say.* I shall not animadvert upon the severity or the leniency of my sentence. Were I to be led this moment from the bar to the scaffold, I should feel the same calmness and serenity which I now do. *My mind tells me that I have acted agreeably to my conscience, and that I have engaged in a* GOOD, *a* JUST, *and a* GLORIOUS *cause,*—A CAUSE WHICH SOONER OR LATER, MUST AND WILL PREVAIL, AND BY A TIMELY REFORM, SAVE THIS COUNTRY FROM DESTRUCTION."

"SENTENCE.

"The Lord Justice Clerk and Lords Commissioners of Justiciary having considered the foregoing Verdict, whereby the Assize, all in one voice, Find the Pannel GUILTY of the CRIMES libelled—the said Lords, in respect of the said Verdict, in terms of an Act passed in the 25th year of his present Majesty, entitled 'an Act for the more effectual Transportation of Felons and other offenders in that part of Great Britain called Scotland,' *Ordain and Adjudge*, that the said Thomas Muir be *Transported beyond Seas* to such place as his Majesty, with the advice of his Privy Council, shall declare and appoint, and that for the space of FOURTEEN YEARS from this date; with certification to him, if after being so transported he shall return to,

and be found at large, within any part of Great Britain, during the said fourteen years, without some lawful cause, and be thereby legally convicted, he shall suffer Death, as in cases of Felony, without benefit of Clergy, by the law of England—and *Ordain* the said Thomas Muir to be carried back to the Tolbooth of Edinburgh, therein to be detained till he is delivered over, for being so transported, for which this shall be to all concerned a sufficient warrant.

(Signed) ROBERT M'QUEEN."

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## No. II.

*Copy Letter*, Rev. WM. DUN, *Minister of Kirkintilloch*, *to* Mr. MUIR.

MY DEAR SIR,—The unanimous wish of the Session of Cadder, and I am desired to say, the prevailing wish of the people of Cadder, is, to have the Sacrament of the Lord's Supper dispensed among them this season;—of this they have desired me to inform you, hoping it will meet with your approbation. The Presbytery of Glasgow is to be advised of it on Wednesday first, and requested to appoint a day for the purpose, and the fourth Sabbath of July has been thought of by some. As an ordinance of our holy religion, it is surely proper—in other respects it may do good, and can do no harm.

To have your approbation of this design before the meeting of Presbytery, would be agreeable to the Elders, and also to him who has the pleasure to be,

DEAR SIR,
With respect,
Your most humble Servant,
WM. DUN.

Kirkintilloch, June 8, 1792.

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## No. III.

*Answer by* Mr. MUIR.

DEAR SIR,—The proposed celebration of the Sacrament of the Lord's Supper, in the parish of Cadder, is a measure to which I cordially give my highest approbation. Whatever *political* opinion may be entertained by different parties, in this instance, I should consider their interference as a crime of the deepest guilt.* I therefore hope, that upon all sides there will be universal unanimity. No exertion upon my part shall be wanting, to render every thing convenient for the Ministers who may attend.†

You are, however, sensible, that from the various altercations which have lately occurred, much of the utility of the measure will depend upon a prudent choice of these Ministers. I could wish that gentlemen, obnoxious to no party, should be invited, whose public ministrations will not be associated in the minds of the people with prior

* To the scandal of the Church of Scotland, political animosity, at this time, frequently displayed itself from the pulpit!

† Mr. Muir generally entertained the Ministers at Huntershill.

political conduct—whom they will regard solely as the Ministers of religion, and not as the partisans of any particular party. Upon this subject I beg your advice. I value the interests of religion, and I consider this to be to them of the highest moment.

Returning you my sincere thanks for your attention to the parish, in a matter of such superior importance, I remain,

DEAR SIR,

Yours most respectfully,

Edinburgh, 11th June, 1792. THOMAS MUIR.

Rev. Mr. WM. DUN.

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## No. IV.

*Original List of Assize, or of the 45 Jurymen, from whom the Lord Justice Clerk "selected" the 15 who sat on the Trial, shewing the order in which these 15 were selected.*

| | | |
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| | 1 | Sir John Clerk of Pennycuick, Baronet |
| | | Sir William Dick of Prestonfield, Baronet |
| | | Sir John Inglis of Cramond, Baronet |
| | | Sir Archibald Hope of Craighall, Baronet |
| 1 | 5 | *Sir James Fowlis* of Collington, Baronet |
| | | Sir Philip Ainslie of Comley-Bank |
| | | Charles Watson of Saughton |
| | | James Forrest of Comiston |
| | | Thomas Craig of Riccarton |
| 2 | 10 | *Captain John Inglis* of Auchindinny |
| 3 | | *John Wauchope* of Edmonstone |
| 4 | | *John Balfour* younger of Pilrig |
| | | David Johnston of Bavelaw |
| | | John Davie of Gaviside |
| 5 | 15 | *Andrew Wauchope* of Niddry Mariahal |
| 6 | | *John Trotter* of Mortonhall |
| 7 | | *Gilbert Innes* of Stow |
| | | John Davidson of Ravelrigg |
| 8 | | *James Rochied* of Inverleith |
| | 20 | John Newton of Curriehill |
| | | James Calderwood Durham of Polton |
| | | Thomas Wright of Greenhill |
| | | James Gillespie of Spyelaw |
| | | Thomas Sivewright of South-house |
| | 25 | James Kerr of Woodburn |
| 9 | | *John Alves* of Dalkeith, portioner |
| | | Patrick Pridie, hatter in Edinburgh |
| | | Thomas Brown, bookseller there |
| | | Andrew Smith, perfumer there |
| | 30 | James Charles, hosier there |
| | | Alexander Inglis, merchant there |
| | | William Pattison, merchant there |
| | | William Cooper, upholsterer there |
| | | Andrew Ramsay, slater there. |

35 Thomas Duncan, bookseller there
*William Dalrymple*, merchant there
Francis Buchan, merchant there
James Mansfield, banker there
*Donald Smith*, banker there
40 *James Dickson*, bookseller there
Samuel Paterson, merchant there
*George Kinnear*, banker there
*Andrew Forbes*, merchant there
*John Horner*, merchant there
45 Alexander Wallace, banker there.

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## No. V.

*List of Witnesses for the Crown.*

1 John Brown, weaver at Lennoxtoun, parish of Campsie, and county of Stirling.
John Spier, weaver at Lennoxtoun aforesaid.
William Robertson, excise-officer there.
Francis Clark, calico-printer at Lennox Mill, parish and county aforesaid.
5 Alexander Johnston, bleacher at Kincaid Printfield, Campsie aforesaid.
Henry Freeland, weaver in Kirkintilloch.
William Muir, weaver there.
John Scott, wright there.
Robert Weddel, weaver there.
10 James Baird, hosier there.
The Rev. Mr. William Dunn, minister of Kirkintilloch.
John Scott, weaver there.
William Knox, weaver there.
James Muir, student of divinity, residing at Campsie.
15 Anne Fisher, servant, or late servant, to Mr. John Carlisle, Collector of the Cess in Glasgow.
Thomas Wilson, barber in Glasgow.
William Reid, bookseller and stationer there.
James Brash, bookseller and stationer there.
David Blair, manufacturer in Glasgow.
20 John Muir, senior, late hat-manufacturer, presently residing there.
John Barclay, residing in the parish of Calder, in the county of Lanark, and one of the elders of said parish.
The Rev. Mr. James Lapslie, minister of Campsie.
James Campbell, writer to the signet.
James Denholm, writer in Edinburgh.
25 Hugh Bell, brewer there.
John Buchanan, baker in Canongate of Edinburgh.
Mr. John Morthland, advocate.
William Skirving of Strathruddy, residing in Edinburgh.
Lieutenant-Colonel William Dalrymple of Fordell.

Mr. Robert Forsyth, advocate.
Richard Fowler, student of medicine, residing in Edinburgh.
John Pringle, Esq. Sheriff-depute of the county of Edinburgh.
William Scott, Procurator-fiscal of the said county of Edinburgh.
Joseph Mack, writer in Edinburgh.
Sir James Colquhoun of Luss, Baronet, Sheriff-depute of the shire of Dumbarton.
William Honyman, Esq. Sheriff-depute of the shire of Lanark.
Harry Davidson, Esq. Sheriff-substitute of the county of Edinburgh.
George Williamson, messenger in Edinburgh.
Mr. James Carmichael, commander of the Justice hulk, in the service of the Board of Customs.
William Ross, Esq. one of the Justices of Peace for the county of Wigton.

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## No. VI.

*List of Exculpatory Witnesses for* Mr. MUIR.

William Riddle, baker in Glasgow.
John Hamilton, manufacturer there.
David Dale, junior, manufacturer there.
Basil Ronald of Broomlone, there.
Alexander Park, writer there.
George Weddel, manufacturer there.
John Russel, merchant in Gallowgate there.
John Brock, manufacturer there.
John Wilson, shoemaker in Gorbals of Glasgow.
John Lockhart, mason there.
Walter Hart, heritor in Tradeston, Glasgow.
Hugh Moodie, spirit-dealer in Glasgow.
James Cooper, shoemaker there.
John Gray, manufacturer there.
Daniel M'Arthur, one of the masters of the Grammar-school, Glasgow.
James Richardson, senior, merchant there.
William Clydesdale, cabinet-maker there.
John Tennant, brewer there.
George Bell, junior, manufacturer there.
George Stayley, manufacturer there.
Robert M'Kinlay, print-cutter in Mr. Fulton's employment, near Paisley.
William Orr, junior, manufacturer in Paisley.
James Craig, manufacturer there.
James Gemmel, merchant there.
William Muir, Fisherrow there.
Hamilton Ballantyne, Storrie street there.
James Muir, weaver, Shuttle street there.
John Buchanan, foreman at Kincaid printfield, Campsie.
Robert Henrie, printer there.

Patrick Horn, printer there.
Smollet M'Lintock, block-cutter there.
William Henry of Borrowstown, parish Baldernock.
James M'Gibbon, printer at Kincaid printfield.
John Freeland, distiller in Kirkintilloch.
Andrew Rochead, younger, of Duntiblae Mill, Kirkintilloch.
Robert Boak, surgeon in Kirkintilloch.
John Edmund, print-cutter, Kincaid printfield.
Robert Millar, weaver in Cambuslang.
The Rev. Mr. William Dunn, minister of Kirkintilloch.
David Wallace, late servant to James Muir of Huntershill, now to James Stark of Adamslie.
Robert Scott, weaver in Kirkintilloch.
Archibald Binnie, type-founder, Edinburgh.
Charles Salter, brewer in Edinburgh.
Peter Wood, teacher in Portsburgh.
John Buchanan, baker in Canongate.
—— Bell, tobacconist, Canongate.
William Skirving, Edinburgh.
Maurice Thomson, starch-maker there.
Andrew Wilson, brewer in Portsburgh.
John Smith, weaver, Lothian Road.
Peter Hardie, brewer in Portsburgh.
Colonel William Dalrymple of Fordell.
William Johnston, Esq. Edinburgh.
The Right Hon. Lord Daer.
—— Newton, residing at St. Patrick's Square, Edinburgh.

## No. VII.

### *Declaration of* Mr. Muir *before the Sheriff.*

At Edinburgh, the 2d of January, 1793.

The which day compeared, in presence of John Pringle, Esq. Advocate, his Majesty's Sheriff-depute of the shire of Edinburgh, *Thomas Muir*, Esq. Advocate; who being examined by the Sheriff, and being interrogated, Whether or not the declarant, in the month of November last, was in the towns of Kirkintilloch, Lennoxtown of Campsie, or Milltown of Campsie? Declares, That he declines answering any questions in this place, as he considers a declaration of this kind, obtained in these circumstances, to be utterly inconsistent with the constitutional rights of a British subject: That he has solemnly maintained this principle in pleading for others in a criminal court; and that, when it comes to be applied to his own particular case, as at present, he will not deviate from it. Declares, That he neither composed, published, nor circulated books or pamphlets, inflammatory or seditious: That in public and private, he always advised, and earnestly entreated those who might be engaged in the prosecution of a Constitutional Reform, in the representation of the people in the House of Commons, to adopt measures mild but firm, moderate but constitutional; and that he has always inculcated upon

all whom he may have addressed upon any occasion, that there was no other mode of accomplishing a Constitutional Reform in the representation of the people in the House of Commons, but by the mode of respectful and Constitutional Petitions to that House, for that purpose; and that he did not doubt but the wisdom of that House would listen to the voice of the people, when thus constitutionally presented. And being shown three numbers of a paper, intituled, The Patriot, the first dated "Tuesday, April 17, 1792;" the second dated "Tuesday, June 12;" and the third, "Tuesday, July 10," without mention of the year; and being interrogated, if he gave these pamphlets to William Muir, weaver in Kirkintilloch, and eight other numbers of the [illegible] publication? Declares, that he adheres to the principles which he has mentioned in the preceding part of this declaration, and declines answering the question. And being shown a book, intituled, "The Works of Thomas Paine, Esq." and interrogated, if he did not give said book to Henry Freeland, weaver in Kirkintilloch, and Preses of the Reform Society there? Declares, That he adheres to his principle, and declines answering the question. And being shown a pamphlet, intituled, "A Declaration of Rights," and an "Address to the People;" and interrogated, Whether or not he gave the aforesaid pamphlet to the said Henry Freeland? Declares, That he declines answering, upon the aforesaid principle. And being interrogated, Whether or not he gave to the aforesaid Henry Freeland, a book, intituled, "Flower on the French Constitution?" Declares, That he declines answering the question, upon the aforesaid principle; and all the before-mentioned books are marked as relative hereto, of this date. And being interrogated, Whether or not the declarant was a member of the Convention which met at Edinburgh, in the month of December last, styling themselves the Convention of the Associated Friends of the People, and produced to that meeting a paper, intituled, "Address from the Society of United Irishmen in Dublin, to the Society for Reform in Scotland, 23d November, 1792," and moved, that the thanks of the meeting should be returned to that Society for said Address? Declares and declines answering the question, upon the aforesaid principle. All this he declares to be truth.

(Signed) THOMAS MUIR.
JOHN PRINGLE.

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## No. VIII.

*Declaration of* GEORGE WILLIAMSON.

At Edinburgh, 10th August, 1793.

GEORGE WILLIAMSON, messenger in Edinburgh, declares, That on Friday the 2d of August instant, he received a warrant of the Court of Justiciary, for bringing the person of Mr. Thomas Muir, younger of Huntershill, from the prison of Stranraer to the prison of Edinburgh. In consequence of which he went to Stranraer, and arrived there in the morning of Sunday the 4th instant, when he received the person of the said Thomas Muir; and he also received from Mr. Kerr, one of the Magistrates of Stranraer, a parcel, sealed,

and intituled, "Papers belonging and found on Mr. Thomas Muir, W. R. J. P." And which packet was sealed with the seal of the burgh of Stranraer, and also with two seals, which he now hears Mr. Muir declare to be his; and which parcel he now exhibits, with the seals entire.

And the foresaid parcel having been opened in presence of the said Sheriff-substitute, Hugh Warrender, Esq.* Mr. William Scott, Procurator-fiscal of the shire of Edinburgh, George Williamson, messenger in Edinburgh, and Joseph Mack, writer, Sheriff-Clerk's Office; and also in presence of Mr. Thomas Muir, who admitted that this was the parcel containing the articles belonging to him, which were sealed up by the Magistrates of Stranraer, and to which he then affixed his seals, and which he observed to be entire, previous to its being opened in his presence; The same was found to contain:—

1. Ten copies of a pamphlet, intituled, "Proceedings of the Society of United Irishmen of Dublin. Dublin, printed by order of the Society, 1793."
2. A printed copy of the trial, at large, of Samuel Bushby, and Judith his wife.
3. Twenty-nine copies of a printed paper, intituled, "United Irishmen of Dublin, 7th June, 1793," being an Address from the Catholic Committee, to their Catholic Countrymen.
4. Five copies of another printed paper, being "Resolutions of the Society of United Irishmen, held on the 15th of July."
5. Twenty-two copies of a paper, purporting to be an abstract of the trial of Francis Graham, Esq. one of his Majesty's Justices of Peace for the county of Dublin, on the 9th July, 1793, before the Hon. Baron Power.
6. A printed copy of an Act to prevent tumultuous risings, &c. of the 27th Geo. III. printed Dublin, 1787.
7. Eighty-four copies of a printed paper, dated, "Rath Coffy, 1st July, 1793;" containing a quotation from Milton, on the liberty of unlicensed printing.
8. Letter, signed J. Muir, dated Glasgow, 21st July, 1793, beginning with, Dear Sir, but having no address.
9. Letter, signed Thomas Muir, and addressed to Captain George Towers, of the American ship the Hope, from Baltimore, care of Messrs. Cunningham & Co. merchants, Belfast, and dated Dublin, 27th July, 1793.
10. A Red Turkey pocket-book, containing:
    1. A passport from the Department of Paris, in favour of Citizen Thomas Muir, dated 23d April, 1793, having upon the back an indorsement, dated 5th May, 1793.
    2. Receipt by A. M'Dougal to Mr. Muir, for 900 livres, for his passage in the cabin of the ship from Havre de Grace to the Port of New York, dated Havre de Grace, 16th May, 1793.

* Afterwards Crown Agent for Scotland.

3. Certificate that Thomas Muir has been duly elected one of the members of the Society of United Irishmen of Dublin, dated 11th January, 1793, signed Archibald Hamilton Rowan, Secretary.
4. Sealed letter, directed, "The Rev. Thomas Fische Palmer, Edinburgh." The seal, a Cap of Liberty, over a Fleur de Lis, motto, *Ca Ira.*
5. Ditto, directed, "Norman M'Leod, Esq. M.P. Scotland."
6. Ditto, directed, "To Mrs. M'Cormick, at Dr. M'Cormick's, St. Andrews, Scotland."
7. Another passport, of the Department of Calais, in favour of citizen Thomas Muir, dated 15th January, 1793.
8. Passport of the Commissary of the Section of the Thuilleries, in favour of citizen Thomas Muir, dated 4th May, 1793.
9. Declaration of Residence, dated 3d April, 1793, in favour of Thomas Muir.
10. Letter, signed D. Stewart, dated No. 52, Frith-street, Soho, London, February 1.
    1st. (Addressed) John Hurford Stone, Esq. or Thomas Muir, Esq. Advocate, No. 99, Palais Royal, Paris.
11. Letter, signed James Campbell, dated No. 10, St. Andrew's Square, Edinburgh, 26th January, 1793: addressed to Thomas Muir, Esq. younger of Huntershill.
12. Letter, signed D. Stewart, dated 52, Frith-street, January 30: addressed, Thomas Muir, Esq. Advocate, to the care of John Hurford Stone, Esq. Paris.
13. A letter, signed W. Skirving, without date, addressed to Thomas Muir, Esq. younger of Huntershill.

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## No. IX.

*Copy Certificate of Society of United Irishmen of Dublin.*

I hereby certify that Thomas Muir has been duly elected; and having taken the Test, provided in the Constitution, has been admitted a Member of this Society.

(Signed) ARCHIBALD HAMILTON ROWAN, *Sec.*

No. 205. Jan. 11, 1793.

On the margin of the original, is the figure of a harp, with this motto, "*It is new strung, and shall be heard.*"

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## No. X.

*Passport at Paris.*

*Republique Francaise—Departement de Paris.*

Passport delivre en execution de la Loi du 7 Decembre, 1792, l'an premier de la Republique Francaise.

Vu l'avis du Conseil general de la Commune de Paris, laissez passer le citoyen Thomas Muir, ailant a Philadelphie, domicilie a Paris,

municipalite de Paris, departement de Paris, natif de Ecosse, homme de loi, age de vingt huit ans, taille de 5 pieds 9 pouces, cheveux et sourcils chatain, yeux bleux, nes aquilin, bouche moyenne, menton roud, front haut, visage long et plein,—pretez-lui aide et assistance, au besoin.

Fait en directoire, le 23 Avril mil sept cent quatre vingt treize: l'an deuxeime de la Republique Francaise; et a ledit citoyen Muir signe avec nous administrateurs composant le Directoire du Departement de Paris.

(Approbatif) THOMAS MUIR.
DUBOIS.
E. J. B. MAILLARD.
LE BLANIF.
NICOLEAU, *Presid.*

Vu par nous Ministres des Affaires Etrangeres. A Paris, le 29 Avril l'an 2'me de la Republique.

LE BRUN,
MAILLE, GARAT, *Gr.*

*Translation.*

**Passport delivered in execution of the law, of the 7th December, 1792, first year of the French Republic.**

Having seen the recommendation of the Council General, the Commune of Paris, permit citizen Thomas Muir to proceed on his way to Philadelphia, domiciled at Paris, municipality of Paris, department of Paris, native of Scotland, a lawyer, 28 years of age, 5 feet 9 inches high, his hair and eye-lashes of a chesnut colour, blue eyes, aquiline nose, small mouth, round chin, high forehead, long and full face. Send him aid and assistance if in want.

Executed in the Directory, 23d April, 1793, second year of the French Republic. Citizen Muir signs this with us administrators, composing the Directory of the Department of Paris.

(Approved) Signed as above.

Seen by us Ministers of Foreign Affairs, Paris, 29th April, second year of Republic.

Signed as above.

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## No. XI.

*Letter from* Mr. MUIR *to* Mr. CAMPBELL, *Writer to the Signet, Edinburgh.*

Paris, Jan. 23, 1793.

DEAR SIR,—I wrote you from Calais and from Paris, and impatiently expect your answer. Write me fully about my private affairs, but *about nothing else.* Whenever you or my friends judge it expedient or proper, I will immediately return; but I cannot leave Paris without regret. I am honoured by the notice and friendship of an amiable and distinguished circle; and to a friend of humanity, it affords much consolation to find according feelings in a foreign land.

Present my best wishes to all our friends,—to Messrs. Johnston, Skirving, Moffat, Buchanan, &c. I entreat you to find means to send over the numbers of the two Edinburgh Newspapers. The London papers come here but irregularly. One wishes to know what is going on at home; but tell my friends, it is only through the channel of Newspapers, I can receive that intelligence. Write me under the following cover, *Au Citoyen de Coudile, Hotel de Toulon*, No. 1, *rue des Fosses du Temple.* Communicate this address to all my friends. Inform them no letter can reach me, if the postage is not paid in Edinburgh. I am,

DEAR SIR,

Yours, &c.

THOMAS MUIR.

P. S. My compliments to Mr. Dick; entreat him to take the charge of my things.

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## No. XII.

*Second Letter from* Mr. MUIR *to* Mr. CAMPBELL.

DEAR SIR,—I have written you frequently: whenever you think it proper I shall return. At the same time, honoured as I am by the civilities and attention of many amiable characters, it would be with reluctance I could quit Paris for a month or two. About my private business write me, but not a word on any other subject. Remember me to Johnstone, Skirving, Moffat, &c. Tell them no distance of space shall obliterate my recollection of them. Write me punctually, I entreat you. Cause them likewise write me. Omit no post. My address is under cover, *Au Citoyen Coudile, Hotel de Toulon*, No. 1, *rue des Fosses de Temple.* I am,

Yours, &c.

THOMAS MUIR.

Paris, Jan. 27, 1793.

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## No. XIII.

*Letter from* Sir JAMES M'INTOSH *to* Mr. CAMPBELL.

SIR,—I have to acknowledge the receipt of your letter respecting the business of Mr. Muir. I did not lose a moment in fi[illegible]g a safe and speedy conveyance to him at Paris for your letters, and those of his other friends in Scotland, sent to my care. I delayed from day to day, in the perpetual expectation of seeing Mr. Muir here on his return. It becomes now, however, necessary for me to inform you, that he is not yet come; and considering the extreme anxiety which he must have felt to return as soon as possible, I think it very probable that this delay ought to be ascribed to the embargo laid on the vessels in the ports of France, which may perhaps have rendered it impossible for him, though even at Calais, to make his passage to England. I

think this probability at least sufficiently great to be pleaded for a delay of his trial, and it is to enable you and his friends to make any use of it that you may think fit, that I have now thought it necessary to communicate this state of facts to you. I am,

SIR,

Yours, &c.

JAMES M'INTOSH.

St. Charlotte Street, Portland Place, Feb. 7, 1793.

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## No. XIV.

*Letter from* Mr. MUIR's *Father to* Capt. GEO. TOWERS.

Glasgow, July 21, 1793.

DEAR SIR,—I am at a very great loss how to answer your letter, as it's not understood by me: if it's the Friend that I have, if it's he, I would be overjoyed to see his hand-writing, and to know what has become of him these three months. I thought he had been at Philadelphia ere now, where letters are forwarded for him; and if you are to stay any time at Belfast, be so kind as write in course; and I will come over and see you and him. You can write the time you mean to stay. Mr. John Richardson, a son of Deacon James Richardson, I saw him this week at Greenock; he is to sail in the Almy of New York directly, and has two packets of letters for him; and there are many letters wrote for him to the first people of America. Once he were there, he'll get letters to General Washington; and I hope, dear Sir, you'll shew him every civility in your power, which I hope some day gratefully to thank you for. There is a trunk also in the Almy for him, which Mr. Richardson will deliver into his own hand. I sincerely wish you a safe, pleasant, and successful voyage, and a happy meeting with your friends. And I remain,

DEAR SIR,

Your most humble servant,

J. MUIR.

If it's the person I mean, a cousin of his, William Muir, formerly of Leith, is lying at Philadelphia. His ship is an American bottom. The loss of this young man has been a dreadful affliction to us. Please give our friend this letter. I honoured his draft in favour of Mr. Masey. He'll get his letters at the post-office, Philadelphia.

I hope in a year or two he can return, if he doth not love America; and be so good as cause him write me one line in your letter. *You can direct it;* and if he does not *choose to sign it,* you can put your initials to it.

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## No. XV.

*Letter from* T. MUIR *to* Capt. GEO. TOWERS.

Dublin, July 27, 1793.

DEAR SIR,—This day I received yours; and will be down upon Tuesday evening. I have taken my place in the coach for to-morrow.

I am happy to hear my friends are well. I will write them from Belfast. Of this you can give them information. I am,

DEAR SIR,
Your respectful Friend,
THOMAS MUIR.

Capt. GEO. TOWERS, of the American ship, the Hope, from Baltimore, at Belfast.

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## No. XVI.

*Letter from* W. SKIRVING *to* D. STEWART, Esq. *No. 52, Frith-street, Soho, London, Secretary to the Society of Friends of the People.*

Edinburgh, Sept. 2, 1793.

SIR,—I ought to have wrote you on Saturday, to give your Society the means of contradicting the aspersion, which you will see by the accounts of Mr. Muir's trial, has been thrown upon them. I have not been able to command a settled thought since the alarming issue of that astonishing trial. I never had a higher opinion of any person's integrity, uprightness, and philanthropy; nor is it diminished, but increased. The feelings which I must, therefore, have had, since that event, will plead my excuse with men of feeling.

In the evidence which I was called on to give, I stated the reason for his going to London, and that I had received a letter from Mr. Muir, when at London, explaining the cause of his proceeding to Paris; which letter I was very sorry that I could not produce, though I had preserved it carefully. Being desired to state, if I could recollect, the reason which Mr. Muir assigned in that letter for his journey to Paris, I said, that it was the opinion of friends, that if Mr. Muir would go to Paris, he might have great influence with many to mitigate the sentence of the French King. These friends were taken for your Society; and much freedom was used, to reprobate both the Society of the Friends of the People in London, for presuming to send a missionary into another country, and Mr. Muir, for accepting such commission. But I declare, upon my honour, that the thought of his being sent by the Society of the Friends of the People in London, never came into my mind. And if I expressed myself so, which it is impossible I could do, I expressed a falsehood, and which I am bound in justice to the Society, in this manner to contradict.

Mr. Muir is behaving with astonishing manliness.

I am, Sir, your obedient humble servant,
W. SKIRVING.

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## No. XVII.

*Address to the Public.*

IN the different accounts which have been published of Mr. Muir's trial, mention is made of my having been committed to prison for prevarication, or an attempt to conceal the truth. These accounts, in so far as they regard me, being defective, I think it incumbent upon

me, in justice to myself and my character, to present the public with a candid statement of the whole matter.

Being called to the bar of the Court, and having taken the oath to tell the whole truth, and nothing but the truth. I was interrogated, "Has any person instructed you what you should say?" I answered, None; but mentioned that several persons had desired me to tell the truth. I was then asked who had done so? My answer was, that I did not recollect; but that no person had given me any particular instructions, what I alluded to having been only the general observation of several persons with whom I had spoken on the subject. I was then questioned, when I had been cited as a witness; upon which I produced my summons, bearing date the 26th of August. I was again interrogated, if it was after the citation that I had the conversation referred to, and with whom I held these? To which I replied, that it was both before and after citation; but, as it was only a kind of general instruction, I could not recollect any particular person.

I was then ordered to withdraw; and, on being again called into Court, was ordered to prison for three weeks.

This sentence not a little surprised me, as I was totally at a loss to guess the cause, not having been conscious of any wrong. Indeed the whole error (if it may be so called) was the effect of confusion and mistake, which were natural enough, considering my utter ignorance of law proceedings, and that I never before had been examined as a witness in a Court of Justice.

I do not mean to reflect on the Court, but to justify myself from the charge of prevarication, or of concealing the truth, which I had no idea of committing. On the contrary, it appears to me that I was to blame only for an over-anxiety to tell the whole truth in terms of my oath; for had I answered the first question in the negative, (which I was entitled to do, as no person had put words in my mouth,) I would not have had the mortification of being imprisoned.

Conscious of the purity of my intentions, I submit my case to the public; and, leaving it with them to judge with candour, I have only further to observe, that I grieve not so much on account of my confinement, of the injury it may do me in business, or my reputation, as I am sorry that, from my being rejected, Mr. Muir may be the greater sufferer of the two, as he was prevented from having the benefit of my evidence which would have tended highly to his exculpation of the charges against him

JOHN RUSSEL.*

Edinburgh Tolbooth, Sept. 3, 1798.

* The Judges, in rejecting in *toto* the evidence of this gentleman, acted in defiance of every principle of law and justice. They ought to have admitted his evidence, leaving to the Jury to determine its credibility. See afterwards the debate in the House of Commons on this very point. Mr. Russel, we are happy to say, suffered nothing in the estimation of the public, in consequence of the treatment he met with on the above occasion. He died a few years ago in affluent circumstances.

## No. XVIII.

ADDRESS *from the* SOCIETY *of* UNITED IRISHMEN *in Dublin, to the* DELEGATES *for promoting a* REFORM *in* SCOTLAND, *which was brought by the Crown as evidence of Sedition against* Mr. Muir, *and which he read on his Trial.*

We take the liberty of addressing you, in the spirit of civic union, in the fellowship of a just and a common cause. We greatly rejoice that the spirit of freedom moves over the face of Scotland; that light seems to break from the chaos of her internal government; and that a country so respectable for her attainments in science, in arts, and in arms; for men of literary eminence; for the intelligence and morality of her people, now acts from a conviction of the union between virtue, letters, and liberty; and now rises to distinction, not by a calm, contented, secret wish for a reform in Parliament, *but by openly, actively, and urgently willing it, with the unity and energy of an embodied nation.* We rejoice that you do not consider yourselves as merged and melted down into another country, but that in this great national question, you are still—Scotland,—the land where Buchanan wrote, and Fletcher spoke, and Wallace fought.

Away from us and from our children those puerile antipathies so unworthy of the manhood of nations, which insulate individuals, as well as countries, and drive the citizen back to the savage! We esteem and respect you. We pay merited honour to a nation in general well educated, and well informed, because we know that the ignorance of the people is the cause and effect of all civil and religious despotism. We honour a nation regular in their lives, and strict in their manners, because we conceive private morality to be the only secure foundation of public policy. We honour a nation eminent for men of genius, and we trust that they will now exert themselves, not so much in perusing and penning the histories of other countries, as in making their own a subject for the historian. May we venture to observe to them, that mankind have been too retrospective; canonized antiquity, and undervalued themselves. Man has reposed on ruins, and rested his head on some fragments of the temple of liberty, or at most amused himself in proving the measurement of the edifice, and nicely limiting its proportions; not reflecting that this temple is truly Catholic, the ample earth its area, and the arch of heaven its dome.

We will lay open to you our hearts. Our cause is your cause.—If there is to be a struggle between us, let it be which nation shall be foremost in the race of mind; let this be the noble animosity kindled between us, who shall first attain that free Constitution from which both are equi-distant,—who shall first be the saviour of the empire.

The sense of both countries with respect to the *intolerable abuses of the Constitution* has been clearly manifested, and prove that our political situations are not dissimilar; that our rights and wrongs are the same. Out of 32 counties in Ireland, 29 petitioned for a reform in Parliament; and out of 56 of the royal burghs of Scotland, 50 petitioned for a reform in their internal structure and Government. If we be rightly informed, there is no such thing as popular election

in Scotland. The people who ought to possess that weight in the popular scale, which might bind them to the soil, and make them cling to the Constitution, are now as dust in the balance, blown abroad by the least impulse, and scattered through other countries, merely because they hang so loosely to their own. They have no share in the national *Firm*, and are aggrieved not only by irregular and illegal exaction of taxes; by misrule and mismanagement of corporations; by misconduct of self-elected and irresponsible magistrates; by waste of public property; and by want of competent judicatures; but, in our opinion, most of all, *by an inadequate parliamentary representation*,—for we assert, that 45 Commoners and 16 Peers, are a pitiful representation for two millions and a half of people; particularly as your Commoners consider themselves not as the representatives of that people, but of the Councils of the Burghs by whom they are elected.

Exclusive charters in favour of Boroughs, monopolize the general rights of the people, and that act must be absurd which precludes all other towns from the power of being restored to their ancient freedom.

We remember that heritable jurisdictions and feudal privileges, though expressly reserved by the Act of Union (20th art.) were set aside by Act of Parliament in 1746, and we think that there is much stronger ground at present, for restoring to the mass of the people their alienated rights, and to the Constitution its spirit and its integrity.*

Look now we pray you upon Ireland. Long was this unfortunate island the prey of prejudiced factions and ferocious parties. The rights or rather duties of conquest were dreadfully abused, and the Catholic religion was made the perpetual pretext for subjugating the state by annihilating the citizen, and destroying, not the religious persuasion, but the man; not property, but the people. It was not till very lately that the part of the nation which is truly colonial, reflected that though their ancestors had been victorious, they themselves were now included in the general subjection; subduing only to be subdued, and trampled upon by Britain as a servile dependency. When therefore the Protestants began to suffer what the Catholics had suffered and were suffering; when, from serving as the instruments, they were made themselves the objects of foreign domination, then they became conscious they had a country; and then they felt like Irishmen,—they resisted British dominion, renounced colonial subserviency, and following the example of a Catholic Parliament, just a century before, they asserted the exclusive jurisdiction and legislative competency of this island. A sudden light from America shone through our prison. Our volunteers arose. The chains fell from our hands. We followed Grattan, the angel of our deliverance, and in 1782, Ireland ceased to

* What an unanswerable argument to the narrow-minded *anti*-reform paper freeholders of Scotland, who are now wasting their lungs by bawling about the inviolability of the Treaty of Union, as if the Treaty of Union was made purposely for them. The conduct of these ninnies reminds us of the conduct of the Earl of Nottingham, who was once, we believe, Lord Chancellor of England, and who, when that Treaty was in agitation, gravely declared, that the changing of the term England to that of Great Britain, would positively subvert all the laws of England!!!

be a province, and became a nation. But, with reason, should we despise and renounce this Revolution, as merely a transient burst through a bad habit; the sudden grasp of necessity in despair, from tyranny in distress, did we not believe that the Revolution is still in train; that it is less the single and shining act of 82, than a series of national improvements which that act ushers in and announces; that it is only the herald of liberty and glory, of Catholic emancipation, as well as Protestant independence; that, in short, this Revolution indicates new principles, foreruns new practices, and lays a foundation for advancing the whole people higher in the scale of being, and diffusing equal and permanent happiness.

British supremacy changed its aspect, but its essence remained the same. First it was force, and on the event of the late Revolution, it became influence; direct hostility shifted into systematic corruption, silently drawing off the virtue and vigour of the island, without shock or explosion. Corruption that glides into every place, tempts every person, taints every principle, infects the political mind through all its relations and dependencies; so regardless of public character as to set the highest honours to sale, and to purchase boroughs with the price of such prostitution; so regardless of public morality, as to legalize the licentiousness of the lowest and most pernicious gambling, and to extract a calamitous revenue from the infatuation and intoxication of the people.

The Protestants of Ireland were now sensible that nothing could counteract this plan of debilitating policy, *but a radical reform in the House of the People*, and that without such reform, the Revolution itself was nominal and delusive.—The wheel merely turned round, but it did not move forward, and they were as distant as ever from the goal. They resolved—they convened—they met with arms—they met without them—they petitioned;—but in vain; for they were but a portion of the people. They then looked around and beheld their Catholic countrymen. Three million—we repeat it—three million taxed without being represented, bound by laws to which they had not given consent, and politically dead in their native land. The apathy of the Catholic mind changed into sympathy, and that begot an energy of sentiment and action. They had eyes, and they read. They had ears, and they listened. They had hearts, and they felt. They said, "Give us our rights, as you value your own. Give us a share of civil and political liberty, the elective franchise, and the trial by jury. Treat us as men, and we shall treat you as brothers. Is taxation without representation a grievance to three millions across the Atlantic, and no grievance to three millions at your doors? Throw down that pale of persecution which still keeps up civil war in Ireland, and make us one people. We shall then stand, supporting and supported, in the assertion of that liberty which is due to all, and which all should unite to attain."

It was just—and immediately a principle of adhesion took place for the first time among the inhabitants of Ireland;—all religious persuasions found in a political union their common duty and their

common salvation. In this Society and its affiliated Societies, the Catholic and the Presbyterian are at this instant holding out their hands and opening their hearts to each other, agreeing in principles, concurring in practice. We unite for immediate, ample, and substantial justice to the Catholics, *and when that is attained, a combined exertion for a Reform in Parliament* is the condition of our compact, and the seal of our communion.

British supremacy takes alarm! The haughty monopolists of national power and common right, who crouch abroad to dominion at home, now look with more surprise and less contempt on this "besotted" people. A new artifice is adopted, and that restless domination which at first, ruled as open war, by the length of the sword; then, as covert corruption, by the strength of the poison; now assumes the style and title of Protestant Ascendancy; calls down the name of religion from heaven to sow discord on earth; to rule by anarchy; to keep up distrust and antipathy among parties, among persuasions, among families; nay to make the passions of the individuals struggle, like Cain and Abel, in the very home of the heart, and to convert every little paltry necessity that accident, indolence, or extravagance bring upon a man, into a pander for the purchase of his honesty and the murder of his reputation.

We will not be the dupes of such ignoble artifices. We see this scheme of strengthening political persecution and state inquisition, by a fresh infusion of religious fanaticism; but we will unite and we will be Free. Universal Emancipation with Representative Legislation is the polar principle which guides our Society, and *shall* guide it through all the tumult of factions and fluctuations of parties. It is not upon a coalition of opposition with ministry that we depend, but upon a coalition of Irishmen with Irishmen, and in that coalition alone we find an object worthy of reform, and at the same time the strength and sinew both to attain and secure it. It is not upon external circumstances, upon the pledge of a man or a minister, we depend, but upon the internal energy of the Irish nation. We will not buy or borrow liberty from America or from France, but manufacture it ourselves, and work it up with those materials that the hearts of Irishmen furnish them with at home. We do not worship the British, far less the Irish Constitution, as sent down from heaven, but we consider it as human workmanship, which man has made, and man can mend. *An unalterable Constitution, whatever be its nature, must be despotism. It is not the Constitution, but the People, which ought to be inviolable; and it is time to recognise and renovate the rights of the English, the Scotch, and the Irish nations.*—Rights which can neither be bought nor sold, granted by charter, or forestalled by monopoly, but which nature dictates as the birthright of all, and which it is the business of a Constitution to define, to enforce, and to establish. If Government has a sincere regard for the safety of the Constitution, let them coincide with the people in the speedy reform of its abuses, and not by an obstinate adherence to them, drive that people into Republicanism.

We have told you what our situation was, what it is, what it ought to be: our end, a National Legislature; our means, an union of the

whole people. Let this union extend throughout the empire. Let all unite for all, or each man suffer for all. In each country let the people assemble in peaceful and Constitutional Convention. Let delegates from each country digest a plan of reform, best adapted to the situation and circumstances of their respective nations, and let the Legislature be petitioned at once, by the urgent and unanimous voice of Scotland, England, and Ireland.

You have our ideas. Answer us, and that quickly. This is not a time to procrastinate. Your illustrious Fletcher has said, that the liberties of a people are not to be secured, without passing through great difficulties, and no toil or labour ought to be declined to preserve a nation from slavery. He spoke well; and we add, that it is incumbent on every nation who adventures into a conflict for freedom, to remember it is on the event (however absurdly) depends the estimation of the public opinion; honour and immortality, if fortunate; if otherwise, infamy and oblivion. Let this check the rashness that rushes unadvisedly into the committal of national character, or [illegible] that be already made, let the same consideration impel us all to advance with active, not passive perseverance; with manly confidence and calm determination, smiling with equal scorn at the bluster of official arrogance, and the whisper of private malevolence, until we have planted the flag of Freedom on the summit, and are at once victorious and secure.

(Signed) WM. DRENNAN, *Chairman.*
ARCHD. HAMILTON ROWAN, *Secy.*

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## No. XIX.

*(Abridged from the Morning Chronicle and Scots Magazine,* 1794.*)*

### BRITISH PARLIAMENT.

### HOUSE OF LORDS, JANUARY 31, 1794.

*Trials of Mr. Muir and Mr. Palmer.*

Earl STANHOPE rose and said, that their Lordships would admit that no part of their duty was more important than that of watching the proceedings of the Courts below. The due administration of justice was one of the most essential rights of the people, and every right of the people created a correspondent duty in them. The case upon which he was to call their Lordships' attention was one of the strongest that ever occurred, if not the very strongest. Perhaps he should be asked if there were any precedents for the measure he was about to propose; though he did not hold himself bound to find precedents, and though he thought it the duty of the House to make a precedent where justice demanded it, yet here he had precedents. In the 1st of William and Mary, there were no less than four Acts passed, reversing the unjust attainder of Alderman Cornish, of Alice Lisle, of Algernon Sydney, and of Lord Russell. That of Alderman Cornish originated in that House, and was strictly in point, as their Lordships would see by a reference to the journals.

The proceedings in the late trials against Mr. Muir and Mr. Palmer, before the Lords of Justiciary in Scotland, were so extraordinary that it became their Lordships, by a regard to the sacred character of justice, to inquire into them—they were contrary to the principles of immutable justice, and directly in opposition to resolutions of that House. In the impeachment of Mr. Hastings, their Lordships had made, in the year 1790, no less than four resolutions, which shewed their sense of principles which belonged to no one nation, and to no one tribunal, but were of the essence of justice. The principle was, that when a man was put upon his trial, no charge could be brought forward in evidence which was not set forth in the original indictment.

Now, if this principle was applied in the case of Mr. Hastings, who was to have months, and even years, to prepare his defence, how much more forcibly did it apply to Mr. Muir, who was to answer on the moment? But what would their Lordships say when they heard that facts were brought forward in evidence not charged in the indictment, "because," forsooth, said the Lord Advocate, "if he had enumerated all the acts of the defendant in the indictment, it would have covered the walls of the Court." This was not all,—Mr. Muir was obliged, by the practice of the Court, to give in a list of the witnesses the day before the trial. Then, after seeing all that he meant to prove in his justification, the Prosecutor was suffered to bring forth new facts against him, of which no notice had been given him, under the pretext of their being collateral to the main point, and for which he could not, even if he had had a hundred witnesses in Court that could refute them, have adduced any one of them, because their names had not been given in the day before. By this means the gentleman was *entrapped*; he begged that his words might be attended to. The gentleman was entrapped in a manner most outrageous to all ideas of common justice.—There were other circumstances in this trial equally at variance with all the principles which we reverenced. Challenges were made of several of the Jurors upon grounds that ought to have been irresistible; nay one of the Jurors felt the force of the objection so strongly, that he requested permission to withdraw—this was overruled. If all this was the law of Scotland, which certainly he could not take upon himself to deny, he would only observe that Scotland had no more liberty than it had under the race of the Stuarts. All that he contended for, was that they should inquire into the trials: he meant to propose no censure in the first place; he desired only that the sentences passed against these persons should not be put into execution until their Lordships should have time to inquire, for nothing was so clear that they ought to prevent the evil consequences of these harsh and indiscreet proceedings, not to suffer them first to take place, and then find that they were wrong. He had some similar motions in his hand, for the four cases that had already occurred in Scotland, of Mr. Muir, Mr. Palmer, Mr. Skirving, and Mr. Margarott. He concluded with moving the first, That our humble Address be presented to his Majesty, humbly to represent to his Majesty, that some time ago Thomas Muir, Esq. was tried on a criminal prosecution be-

fore the Lords Justiciary of Scotland; in consequence of which sentence of transportation beyond seas for fourteen years had been passed upon him.—That this House were forthwith to take into their consideration the proceedings had on the said tr[illegible] and sentence. And, therefore, praying his Majesty not to carry into execution the said sentence, until the House had made the proposed inquiry.

The EARL of MANSFIELD said, that a motion of a more singular nature he had never heard. On an attack on a Court to which he had the honour to belong, he could not give a silent vote; though the Noble Earl had not concluded with a motion of censure, yet in language which he must think was intemperate and unprovoked, he had thrown forth charges of a severe and unfounded nature. In regard to the trial, the persons had been convicted by a verdict of their country. Their Lordships were bound to consider the verdict as legal, until an appeal came before them; but no appeal, it might be said, could come from the courts below in criminal cases; true, but there was a way of bringing every such question before the cognizance of Parliament, and God forbid that the day should ever come, when the conduct of Judges in the administration of justice was not subject, in the proper form, to the strict revision of Parliament. The only question which could come before them, was, whether the sentence, as passed by the Judges in the cases alluded to, was legal, and whenever that question should be brought before them, he pledged himself to shew that the sentence was strictly legal in every point of view.

The EARL of LAUDERDALE said, he had endeavoured to persuade the Noble Lord not to bring forward the important question in a way in which, by the orders of the House, it could not be entertained; and even now he hoped he would withdraw it, only that it might be brought forward in a more regular way; if he persisted in it, he should only decline voting at all. But as the motion was made, he would just say, that it was no wonder that these trials had produced so much public emotion, and had so warmly interested the feelings of mankind, since, that men in Scotland should be transported to Botany Bay for fourteen years, for what in England had raised others to the most splendid situations, was certainly calculated to excite surprise and even more unpleasant sensations. Nor would it escape their observation, that there must be something extremely harsh in the law of Scotland which should inflict a punishment of fourteen years' transportation for the same offence, which, in England, would subject a man to no more than twelve months' imprisonment. That, undoubtedly, there were extraordinary proceedings on the trial, no man who had read the different accounts could deny; and he concluded with saying, that if the Noble Lord should take the opinion of the House, he certainly would not vote against him.

The EARL of COVENTRY said a few words against the motion.

The LORD CHANCELLOR said, that in the situation in which he stood, it became him to deliver a few words on the most extraordinary motion he had ever heard. For, granting even that there had been, in the cases alluded to, a mis-trial, that any doubts were entertained

of the legality of any part of their proceedings, that the verdict of the Jury had not been justified by the evidence, that the conduct of the Judges had in any degree been founded in misapprehension of the case, that there had been a misapplication of the law, or in short, if there had been any thing irregular in the trial, verdict or sentence, there was a remedy provided by the Constitution, for bringing the whole into revision. But who ever heard of a single instance of an address being moved for in this House, to pray his Majesty to postpone the execution of a sentence? Nothing was more certain than that human judgment might err; and not a year, not an assize, not a term, almost passed, without instances of cases being brought into that state, when one Judge was happy to have his judgment revised by his brothers, and when, by more deliberate discussion of a question, any error into which he might have fallen might be corrected to the ease and remedy of the parties concerned. Cruel and hard would be the situation of a Judge, if such means were not given him, of retracting any misapprehension or error into which he had fallen. What was the way in which this was to be done? By the person, who stood convicted by a Jury of his country of a crime, humbling himself before the throne, and presenting a petition stating the hardship of his case, and praying his Majesty to interfere with the gracious exercise of his prerogative. It certainly was not unfit that a person upon whom a verdict of guilty was so passed by his country, should so humble himself before the throne; in truth it was not humbling—it was becoming, that a man against whom such a sentence lay should present his case in terms of supplication. Was it so here? Had any petition been presented by the persons tried in Scotland? No such thing. He could take upon him to say, that such was the anxiety of those whose duty it is to advise his Majesty in that to which his own disposition so constantly leads him, for the clear ascertainment of the legality of the sentences in question, that though no petition had been presented by the parties, an inquiry had been made; and he would take upon himself to say, that when this paper should be laid before their Lordships, they would see that no pains had been spared to determine whether any circumstances had occurred either of irregularity in the trials, or of illegality in the sentence. It was not necessary for him to volunteer the production of this paper, but if ever their Lordships should think proper to entertain an inquiry into the case, he would pledge himself that they should find the conduct of the Judges of Scotland had been such as their Lordships would always desire to find in men intrusted with functions so important. He avoided any more sounding and extravagant terms of praise, because he wished not to enter into eulogiums that might be thought overstrained.

The Noble Earl had referred to resolutions of that House as a ground for arraigning the proceedings on the trials. The Scotch Judges neither could know officially, nor be guided by any resolutions of that House; they could act only by the practice of their own Court. The Lord Advocate had a right to prove facts collateral with

the main fact, though not specially stated in the indictment. In the same way with respect to the challenges, nothing could be more absurd than the grounds on which they were made. To challenge jurors because they had entered into associations, was in fact to challenge all that was respectable in the country, for almost every man of rank or respect, had at that time associated for the purpose of supporting the Constitution. In short, all the objections which had been made on these trials properly over-ruled, were something in the nature of the speech of that man, who, being put on his trial, said he would swear the peace against the judge, for he had a design upon his life.

Earl Stanhope said, that he had not heard the only thing that could induce him upon any occasion to withdraw a motion—an argument. The Noble and Learned Lord on the Woolsack confessed, that there might be a mis-trial, and that in case of a mis-trial there was a legal remedy. And what was the legal remedy? That a person unjustly condemned must humble himself before the throne. And this is the boasted justice of England! He trusted that no man would be base enough, who felt conscious innocence, to humble himself; nor was it very becoming the dignity either of national justice, or even of royal prerogative, to expect of an injured man such submission. He had done however good by his motion, for he had drawn from the Noble and Learned Lord on the Woolsack a declaration, that, on the question being represented in the shape of a petition, the remedy would be obtained. (The Lord Chancellor in an under voice, signified his dissent from this statement of his words.) The Noble Lord then means to say, that there will be no remedy; he advises a petition, but declares at the same time that a petition is to be of no avail. My Lords, I persist in my motion, and I shall divide the House if I stand alone; I do not care with how many or with how few I divide, but I will never give up the principle, that it is better to prevent an evil, than afterwards to repent of it.

The question was then put on the motion for the Address on the case of Mr. Muir, and as Earl Stanhope persisted in taking their sense by a vote, they divided.

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The other motions were then put and negatived.

PROTEST.

*Die Veneris*, 31*st Jan.* 1794.

The Order of the Day being read for the Lords to be summoned,

It was moved, That the several Entries in the Journal of the 8th, 10th, and 13th of June, 1689, relative to the bill intitled, "An Act for reversing the attainder of Henry Cornish, Esq. late Alderman of the City of London," be now read.

The same were accordingly read by the Clerk.

Then it was moved, That an humble address be presented to his Majesty, humbly to represent to his Majesty, that this House has been informed that Thomas Muir, Esq. who was tried before the High

Court of Justiciary at Edinburgh, in the month of August last, upon a charge of sedition, has been condemned and sentenced to be transported beyond seas for the space of fourteen years; and further to represent to his Majesty, that this House intends to proceed without delay to examine the circumstances of such condemnation and of such sentence; and therefore humbly to beseech his Majesty, that the said Thomas Muir, Esq. may not be transported beyond seas, until this House shall have had sufficient time to make such examination.

Which being objected to, after debate,

The question being put thereupon, it was resolved in the negative.

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Whereupon the following protest was entered on the Journals by Earl Stanhope.

Dissentient. 1st, Because the attending to the due administration of justice, and the watching over the conduct of the various Courts in this kingdom, is one of the most important branches of the business of this House, and is at all times also one of its most essential duties.

2dly. Because it obviously appears to be proper to examine into the justice and legality of a sentence, before it is executed, and not to permit it to be executed first, and then to examine into its justice and legality afterwards.

3dly. Because, for want of such timely interference on the part of thi House, it has formerly happened, that, within a short time, no less than four unjust and illegal judgments were actually carried into execution, as appears from the respective attainders of the innocent sufferers having been afterwards reversed and made void (when it was too late) by four Acts of Parliament, made and passed in the first year of the reign of their late Majesties King William and Queen Mary, namely, in the cases of Alderman Cornish, Alice Lisle, Algernon Sidney, and Lord Russell.

4thly. Because it is contrary to the first and immutable principles of natural justice, that any thing to the prejudice of a defendant should be brought before a jury in a criminal prosecution, that is "only collateral, not in issue, nor necessary in the conclusion."

5thly. Because it is not (nor ought to be) competent for the Prosecutor to produce any evidence to support any matter that is not charged in the indictment; that is to say, distinctly and precisely charged, and not by mere epithets or general words, such as oppression, sedition, vexation, or the like.

6thly. Because in like manner it is not (nor ought to be) competent for a Prosecutor to produce any evidence to prove any crime to have been committed by a defendant, in any other particular than that wherein it is, in the indictment expressly charged to have been committed.

7thly. Because no such proceedings as those above stated, nor any of them, can be justified under pretence, that "if it had been necessary to specify in the indictment all the facts against the defendant, the

indictment would have covered, by its magnitude, the walls of the Court." And,

8thly. Because in one year of the trial of Warren Hastings, Esq. namely in the year 1790, there were no less than four decisions of the House of Lords upon this subject, viz. on the twenty-fifth day of February, when the Lords resolved,

That the Managers for the Commons be not admitted to give evidence of the unfitness of Kelleram for the appointment of being a renter of certain lands in the province of Bahar; the fact of such unfitness of the said Kelleram not being charged in the impeachment.

And again on the 4th day of May, when the Lords decided,

That it is not competent to the Managers for the Commons to put the following question to the witness upon the Seventh Article of Charge, viz.:—Whether more oppressions did actually exist under the new institution than under the old?

And again on the 18th day of May, when the House of Lords resolved,

That it is not competent to the Managers for the Commons to give evidence of the enormities actually committed by Deby Sing; the same not being charged in the Impeachment.

And again on the 2d day of June, when the Lords resolved,

That it is not competent for the Managers, on the part of the Commons, to give any evidence upon the Seventh Article of the Impeachment, to prove that the letter of the 5th of May, 1781, is false, in any other particular than that wherein it is expressly charged to be false.

The said divisions of the House of Lords are founded upon principles not peculiar to trials by impeachment. They are founded upon common sense, and on the immutable principles of justice. In Scotland those principles are peculiarly necessary to be adhered to, inasmuch as by the laws of that part of the united kingdom, a defendant is obliged to produce a complete list of all his witnesses in exculpation, the day before the trial. That alone appears to me a considerable hardship. But if, after such list is actually delivered in by the defendant, any facts (or supposed facts) not particularly set forth as crimes in the indictment, may, on the following day, for the first time, and without notice, be suddenly brought out in evidence upon the trial against the defendant: such defendant, from such an entrapping mode of trial, may be convicted, although innocent. Such proceedings (whether supported or unsupported by any old Scotch statute passed in arbitrary times) ought, I conceive, to be revised. For, in a free country, there ought not to be one mode of administering justice to one man, namely, to Mr. Hastings, and an opposite mode of administering justice to another man, namely, to Mr. Muir.

STANHOPE.

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## HOUSE OF COMMONS.

*February 24th*, 1794.

*(Abridged from the Scots Magazine and Morning Chronicle of* 1794.*)*

Mr. SHERIDAN presented a petition from the Rev. Mr. Fische Palmer, who had been tried and convicted of sedition at Perth, com-

plaining of the sentence of transportation for seven years, which had been pronounced against him. An interesting discussion took place on this petition, in the course of which

Mr. ADAM (now the venerable Lord Chief Commissioner of the Jury Court in Scotland) rose and stated, that, on Thursday next, he would feel it his duty to bring under the consideration of the House the proceedings of the High Court of Justiciary in Scotland, in reference to the case of Thomas Muir the younger of Huntershill.

Mr. FOX stated, that he considered the sentence of Messrs. Muir and Palmer as illegal and abhorrent of the principles of justice.

Mr. SHERIDAN said, it was very confidentially reported, that although sentence was passed, yet there was good reason for believing that a sentence so abhorrent to the very spirit of our law, a sentence which no man in the House would dare to vindicate if applied to a similar offence in England—would not be carried into execution. That lending a book (which was the case of Mr. Muir) should subject a man to transportation like a felon for fourteen years, *would be enough to raise the people of this country in arms.* If Ministers attempted to make the law of Scotland the law of England, (but they dared not,) they would find it a sufficient crime to forfeit their heads. "They charge us," said Mr. Sheridan, "with making a party question of this, when we ought to have applied to the fountain of mercy." I know what mercy was shewn them before we made any question on the subject. I speak with some information; I have seen those unfortunate victims—I have visited them in those loathsome hulks, where they were confined among common felons, not indeed with irons upon them, but with irons recently taken off, separated from each other, deprived of the comfort of conversing, and that on a pretence that there was danger of sedition in this society—that two imprisoned men could create an insurrection.—"I saw these gentlemen, and I boast of it; for whatever may be the feelings of some, I shall always be proud to countenance whomsoever I conceive to be suffering under oppression."

*March 10th*, 1794.

Mr. ADAM began at five o'clock a speech of three hours and a half, which displayed great extent of historical and legal information. He set out with a very fine appeal to the House on the importance, interest, and gravity of the question which he was about to bring before them. He rose, he said, to offer to the House a proposition on a subject which had already undergone much discussion:—to review the decision of the 31st of August last in the Supreme Court of Justiciary in Scotland against Thomas Muir; and the trial of the Circuit Court of Justiciary, which was also a supreme Court, against Thomas Fysche Palmer. From these Supreme Courts there lay no appeal, and therefore it became necessary for that House to enter into the review. He felt great confidence, as well as great anxiety, upon the present occasion—confidence in the cause which, from its gravity, importance, and interest, he was sure would engage them to

indulge him with the most patient attention; and yet he felt great anxiety at the idea of having to discuss, in a popular assembly, a question that ought to be tried in a Court of Appeal. That resort was denied. He was driven to the necessity of agitating it in that place, where, however, he had comfort in seeing around him so many persons of great talents in every way—men of great legal talents without legal practice, as well as men at the head of the profession; and who were *Doctri utriusque legis*. He referred to the Right Honourable Gentleman opposite to him, who had successively filled the offices of Solicitor-General and Lord Advocate (Mr. Dundas) as well as to the present Lord Advocate, who had so material a share in the present proceedings. He had great confidence therefore, that the discussion of the question would be made in that House with the effect to be expected from men accustomed to form decisions on subjects of jurisprudence, and experienced in the clear, pure administration of the law of the land. He should enter into the discussion with all the coolness, temper, and gravity, which would be used in a Court of Law, as if he were arguing it on a writ of error, and pleading for a new trial. He was sensible of its importance, of its extent, and of its difficulty; but he would not attempt, as Lord Bacon said, "to use a number of words to find talk or discourse; to raise difficulties; to contradict and confute, but to weigh and consider" the case with candour and with gravity. He would endeavour to avoid all technical discussions, of which a great legal character had truly said, "That forms of law were the tenses of justice." He should avoid as much as possible every thing that was merely technical, though it was obvious that the whole merits of the question must, in a great measure, depend on the forms and proceedings in the criminal courts and of the law of Scotland; and by these the legality or the illegality of the proceedings must be determined. His proposition was, that there should be laid before the House certain parts of the Records in these two trials; he said parts of the Records, that he might the better point out the particulars to which he meant to draw their attention. These parts were, the indictment, the plea, the verdict, and the sentence. There were some things also which related to Mr. Muir particularly, which he desired to have before the House; they were the order of commitment of two witnesses, William Muir and John Russell, as well as the objection that was made to the Jurors, which was over-ruled. These were the subjects of his intended motions: but he did not mean to rest here; though this would be the question immediately before the House, he meant undoubtedly to go farther; he meant from these records to question the legality of the sentence, and upon that doubt, as no appeal could lie from this questionable conviction, he proposed to move for a most respectful Address to his Majesty, in favour of these unfortunate men. He assured the House that in pursuing this course, he would make the Address as respectful as it was in his power to do. It was the duty of every individual and of every body of men, who addressed the throne with a petition for the exercise of the prerogative of mercy, to approach his Majesty with the most

respectful language; as it ought to be the care of all men to preserve that loyal obedience to Majesty, which, as Judge Blackstone well said, the Constitution had ascertained to the King. He would use that eminent lawyer's own words: it had been the care of their ancestors, "Not to make the Monarch appear in any of the invidious parts of the Constitution; but in those works in which the nation only see him engaged personally; works of legislature, magnificence, and mercy." By the course which he proposed to himself then, he maintained the truest reverence for the throne; since he moved only for the exercise of his most shining prerogative; and though he questioned the legality of the sentence, and the soundness of the discretion, yet his Address to the throne should be most respectful. This was the nature of his proceeding, and in the discussion of the subject, he thought himself bound to maintain the following propositions:

*First*, That the crimes set forth in the indictments against Thomas Muir and Thomas F. Palmer, are what the law of Scotland calls *leasing-making*, that is, uttering words or publishing matter, tending to breed discord between the King and his people. This is properly a misdemeanour in the nature of a public libel, tending to affect the state, or disturb the government, and these indictments charge no other crime whatever.

*Second*, That the punishment of transportation, cannot, by the law of Scotland, be legally inflicted for the crime of *leasing-making*. The Act of Queen Anne, 1703, c. iv. having appropriated to that crime the punishment of fine, imprisonment, and banishment only, and that the annexing the pain of death to the return from such transportation, was an aggravation not warranted by law. The punishment of death being expressly taken away by that statute, and no statute having passed since that time, which varies or alters that law; and

*Third*, That if the acts charged in the indictments do not constitute the crime of *leasing-making*, or public libel, the indictments charge no crime known to the law of Scotland; 1st, because there is no such crime known to the law of Scotland at common law, as real sedition constituting a distinct and separate offence; 2d, because if there is such a crime, these indictments do not state it; 3d, because, if there were such separate and distinct offence in Scotland at common law, it would be contrary to law to punish that offence by transportation, and not warranted by law to inflict the pain of death for returning from such transportation. These were the propositions which he thought it incumbent upon him to lay down and to maintain. At the same time he conceived, that if he made out the first, he made out his whole case, since that would comprehend the illegality. An indictment in Scotland is laid in the form of a *syllogism*; its major contains the *corpus dilecti*, of which the minor states the facts, and the conclusion is, that the major should be proved by these facts. The indictment of Thomas Muir states in the major, that advising and exhorting persons to purchase and peruse seditious and wicked publications, and to distribute and circulate them, &c. &c. are crimes of a heinous nature; and the facts stated in the minor are, that he did make

speeches in certain societies and meetings, and did advise persons to buy and read Paine's Rights of Man, and did circulate the same. It appears, then, that the major of this proposition holds out no other crime than that of *leasing-making*; and all the facts stated in the minor proposition of his indictment, aggravated as they are by the terms of the major, go no farther than the crime of *leasing-making*. He said he held in his hand one of three trials of Thomas Muir, that had been printed in Edinburgh, the one printed for William Creech, because it was evidently written against the prisoner. If there should be any objections to the quotations which he made from that pamphlet, he gave notice to the House that he held in his hand official copies of the record, with which he had been furnished from Scotland, and to which he should be ready to refer. He said, that by the best authorities on the law of Scotland, there was no such thing as the sort of sedition which the indictment here affected to hold out. The law of Scotland understood from all the facts mentioned in this indictment no other crime than that of *leasing-making*. Sir George Mackenzie, who wrote towards the latter end of the last century, who was so closely connected with the Duke of Lauderdale, and the apologist for all his mal-administration, was an authority that the House would not be disposed to [illegible], inasmuch as it would not be conceived that he would give the most favourable interpretation of the law in favour of the liberty of the subject. What does he say on the point? That, a commotion of the people tending to disturb the Government was treason, but if a commotion was excited upon any private account it was in Scotland called, a convocation of the *lieges*. Sedition was never laid as a *crimen per se*, but as it was connected with other crimes of which it was an aggravation. The *seditio regni* was punishable as treason, and was always so laid in the indictment, and the relevancy of the crime to infer the punishment of treason was always first found by the Court. Here then was an authority which came home directly to the matter in issue, in support of his assertion, that the crime charged upon Muir and Palmer was no other than that described by the Act of Queen Anne to be *leasing-making*. No convocating of the people without arms, and without an overt-act of rebellion, was treason, and they knew of no other sort of sedition in the whole history of the law of Scotland. To be present at meetings, says Sir George Mackenzie, was not relevant to infer the punishment of treason, even though the meetings might be of a tumultuous nature. There could be in short no real sedition without actual rebellion, and every thing short of this real sedition was by the Act of Queen Anne defined to be *leasing-making*, and restricted to an arbitrary punishment. The punishment ordained by that law brought him to his second proposition: it was confined, as he had said, to three kinds, fine, imprisonment, and banishment; and banishment certainly did not mean transportation to a particular spot. A short history of the Act of Queen Anne would give them a master-key to unlock the mystery of all this proceeding, which he called questionable legality and unsound discretion.—It was an act founded on the *Claim of Right*, which was the Charter

of the people of Scotland, and correspondent to the Bill of Rights in England, and therefore it ought to be construed liberally in favour of the people; it was a penal statute, and ought not therefore to be interpreted strictly as to the letter. There was a great advantage in knowing the history of an Act, as the means of expounding its intention; and it was a curious fact, that the Claim of Right, from which this law was derived, contained this important clause; that the 'causing to pursue and forfeit persons, upon stretches of old and obsolete laws, upon frivolous and weak pretences, upon lame and defective probations, as particularly the late Earl of Argyle, are contrary to law.' If England could boast her Russel and her Sidney, Scotland also could boast her Argyle and her Salton. The Earl of Argyle was indicted for high treason and *leasing-making*, on account of his conscientious explanation of his subscription to an unconscientious list. The history of his case was not unknown to Gentlemen, Hume says of it, 'It is needless to enter into particulars, where the iniquity is so apparent: though the sword of justice was displayed, even her semblance was not put on, and the forms alone of law were preserved, in order to sanctify or rather aggravate the oppression.' The horror excited by this case induced the people of Scotland, to insert the memorable clause, which he had read in the claim of right, and under this they thought themselves secure. Eleven or twelve years afterwards, however, on the memorable occasion of Darien's settlement, a number of prosecutions were begun, which roused the Parliament, and they passed a statute, the statute immediately before that on leasing-making, confirming the claim of right in more precise terms, and declaring it to be treason to counteract any part of it. Immediately after this memorable statute, was passed the statute declaring that public libel was merely *leasing-making*, and was subject only to one or other of the three punishments which he had already mentioned. How important to the true understanding of this statute was the short history: it clearly shews the intention of the Scotch Parliament—it did not repeal the crime, but it changed the punishment; it was no longer to incur the pain of death, but the pain of fine, imprisonment, or banishment, and these punishments were intended to be mild, and to be favourable to the subject. This act remained to the present day: nothing had happened since to alter, or to change the statute. Now the question was, Whether the word banishment, and the word transportation, were synonymous. In his mind nothing could be more distinct; and he hoped he should be able to shew the House, that through the whole series of the Scottish history, from the lowest case of mere precedent up to the highest of Legislative act, there was nothing to countenance the idea that the word banishment in this act could infer transportation. Let it be recollected that the act intended to mitigate the punishment, and if there was any doubt about the term, the Judges were bound by sound discretion, to take it in the most lenient sense. To be banished from one's country,

> Around the world abroad to roam,
> Far from his native seat and pleasing home,

has always been considered as a severe and heavy sentence. But to be transported beyond seas to a particular spot—to be imprisoned in a distant and desolate land—to be doomed to the most despotic discipline and servitude, was such an aggravation of the punishment as did demand clear authority for its justification. The distinction between banishment and transportation was clearly known in all countries; it was known to the Roman law; it is known to the English law; and, in Scotland, it was of necessity clearly and perfectly understood and acted upon. Banishment was inflicted, but not transportation. Why? Because banishment was practicable, but transportation was not. Every condemnation must suppose a competent jurisdiction. Now Scotland had no colonies to which it could transport; it had no jurisdiction abroad, and it therefore could not inflict that species of punishment. "With us," says Sir George Mackenzie, "no judge can confine a man whom he banisheth to any place without his jurisdiction, because he hath no jurisdiction over other countries, and so cannot make acts, nor pronounce any sentence relative to them." This was not merely the opinion of the great law authorities of Scotland; it has also been found by decisions of the Court. There was a memorable case before a Scotch Sheriff, where he pronounced the sentence of transportation. The case was appealed to the Court of Session, and they decided that he had not the power of punishing by transportation, as he had no power out of his own shire. They, however, approved of the conviction, and they banished the man forth of Scotland, with certification, that, on his return, he should be punished with transportation; thus declaring their own sense of the difference between banishment and transportation. Nothing could be more glaring than this fact; for they thus, in the face of all the world, had decided the general distinction between the one and the other. The whole series of the statutes of Scotland served to confirm this interpretation. The law of 1609, which punished libels with banishment, was the only law on the subject before the act of 1703; and as Scotland had no colonies until the settlement of Darien, it was clearly understood that it was simple banishment only, and not transportation. It was certainly true, that there were many instances of transportation or of banishment to the West Indies, but they were all statutary; and they were all passed upon crimes that were capital. Wherever the words were added, and which were borrowed from England, they gave a severer meaning to the original Scotch term of banishment, and where they were not superadded, they were not to be implied. Transportation was first introduced by Charles II. and Sir George Mackenzie, his apologist, endeavours to give a colourable pretext to the Act, entitled, "Against such as shall refuse to depone before the Privy Council against delinquents," one clause condemns those who shall refuse or delay to depone, to be banished to his Majesty's Plantations in the West Indies; but in the same Act there is another clause, that no man's declaration shall infer against himself any other penalty than simple banishment. Thus even the statute made a distinction between the two. As to all the Acts of the infamous Privy Council of Scotland, which could only

be paralleled in iniquity by the Star Chamber in England, it was impossible for him to say a word, as they could not be produced or referred to: they were hidden in the darkness with which oppression and iniquity always clothed themselves. But with respect to the sentences of the Court of Justiciary, he would take upon himself to say, that there was not a single instance of transportation passed upon any one offence that was not in itself a capital offence. He could not have looked with his own eyes, but he had been favoured with very accurate notes, and he gave the challenge to the Learned Gentlemen on the opposite side of the House, that in the whole of the records of the Justiciary Court of Scotland they should produce a single instance. He trusted to the industry of gentlemen of most accurate investigation, under directions the most precise. There were three kinds of capital cases in Scotland upon which transportation had been inflicted; the first were capital punishments mitigated to transportation, and such were the capital crimes of notorious adultery, rape, disturbing a man in his dwelling, &c. &c. these crimes, all capital by the law, were frequently mitigated to transportation by the discretion of the Judges. There was a long list of these crimes, which it was not necessary for him to repeat. There was a second class of capital crimes where transportation was also used as a mitigation, and these were the cases in which, before the verdict was passed, the prosecutor agreed to restrict it to an arbitrary punishment. Gentlemen not acquainted with the Scotch law would understand that this was a very common practice in their trials. There was a third class of capital crimes also, where the prosecutor and prisoner consented to transportation, and which compact was a species of mitigation or pardon. In all these cases, the House would see that in all the three classes of capital crimes mitigated, capital crimes restricted to an arbitrary punishment, and capital punishments avoided by compact, transportation was passed only as a mitigation of a higher punishment. It constantly descended downwards; it did not ascend upwards. There was not a single case in the whole history of the practice of the Courts of Justiciary, of the sentence of transportation being passed on any man whose crime did not infer a capital punishment. Now the act of 1703 having made *leasing-making*, what we in England call a mere misdemeanour, and having delared that it should no longer be capital, it certainly was not competent for the Court, in sound discretion, to pass a higher sentence than the law ordained. The act of 1609, which was a law for punishing scandalous libels against the people of England—an odd law, if we were to judge by the manners of the present age, where abusing the Scots was more generally the practice, condemned the offence to banishment, or more rigorous corporeal pain. Banishment there could only mean banishment out of Scotland; for then Scotland had no jurisdiction abroad; and the Act of 1703, being the next, took away all corporeal pain, and was professedly a mitigation of the Act of 1609. But it would not have mitigated the act of 1609, if what was banishment in the first, could be interpreted into transportation in the second. And that the direct contrary was the case,—that the Act of

1703 mitigated the former statutes, was manifest, from the opinion of the greatest lawyers recently after the passing of that Act. In 1715 and 1716, prosecutions were entered into against persons for distributing Jacobite medals among the Faculty of Advocates. Among others, against a person* whose family had since certainly shown invariable loyalty to the family on the throne. The indictments were laid upon the statutes, and Sir David Dalrymple, the Lord Advocate, stated in his information, that 'the laws against *leasing-making* were anciently odious, but, since the happy Revolution, that grievance, among many others, has been removed, what was useful in the acts of *leasing-making*, preserved by the act of 1703, *the bitterness of the punishment is restrained*, and *so* the odiousness of the law is taken off.' The next consideration was, to inquire, whether the laws passed since the Union would change the effect of the statute of 1703. The 4th of George I. specially excludes Scotland; the 6th of George II. recognized what was formerly the law of Scotland, but did not go an iota further than it had gone. The general definition of crimes was different in the two countries. There was no such thing as what we call misdemeanour; there was no such thing as sedition at common law; and all the sentences of transportation go, as he had said, upon capital offences. The 25th of Geo. III. the Act made on the spur of a necessity, in consequence of the loss of America, certainly did not, either by its spirit or letter, change the body of the Scotch law; it ordained the transportation of felons to such places as his Majesty in his council should think fit; but it did not ordain, that what before was a less punishment should from thenceforward be a greater. Surely Parliament would not say, that this statute, which merely went to enable the King to send persons to any place beyond seas, in consequence of our having lost America, could be construed to alter a statute to which it even does not allude; it must be consistent with itself, and as it neither affects to repeal or alter the former statutes, it goes only to declare, that where persons were subject to transportation, the King in council shall have the power to transport them where he pleases. To show the very little accuracy that there was in this Act of Parliament, he stated that it contained the word "*felon*," a word not known to the Scotch law, and which the Scotch statutes had never mentioned; and even the sentence of Mr. Muir was inconsistent with this Act; for by his sentence he might return to Ireland, and yet, by the Act of Parliament, if he did, he was liable to be executed. The Act of 1703 stood then the last and only one upon which the crime of *leasing-making* could be tried; and that crime of *leasing-making*, which was the crime (if any) of Muir and Palmer, was subject by that statute to *fine, imprisonment*, or *banishment only*. He came now to his third proposition, that if the indictments did not charge the crime of *leasing-making*, they charged no other crime; for, as he had said, sedition was no crime at common law in Scotland. And he could not hear without horror, that a doctrine had been set up in justification of

* Mr. Dundas.

the proceedings in Scotland, that as new manners made new crimes, the Court of Justiciary was supreme, and could make law applicable to the occasion. If it was possible to conceive that any Court of Judicature in this country, that boasted of its freedom and of the pure administration of criminal justice, could have such power, he could only say that it violated all his ideas of the Constitution of this country, and was an outrageous libel upon common sense. That such a declaration had come from the seat of justice, he had indeed heard, but sure he was, that it demanded a very strict and precise animadversion. The old laws with respect to Conventicles were clearly done away, and so perhaps were the Burgh Acts; and it was a question, whether, when the English statutes against treason were made to extend to Scotland, they did not abrogate the old laws of treason. It was manifest, he thought, that they abrogated the treason laws of Scotland, where those treason laws varied from those of England.—It was treason in Scotland, for instance, for a person to kill another whom he had in trust, as a schoolmaster his pupil, or a guardian his ward; but though, on the extension of the treason laws of England to Scotland, this ceased to be treason, it was still a *crimen in se*—it was still the crime of murder. It was the same thing, the same analogy would apply to the crime of sedition; the English law could make that treason in Scotland which was not so in England. But they were not charged in the indictment with any other than that crime which in England is the misdemeanour of libel; and he believed there was hardly one man that heard him, that would deny that their punishment exceeded all the bounds of sound discretion. There was a phrase in the Scotch law which answered to what in English law was called accessary; the term was, *art and part*. But by the Scotch law the principal may be charged as *art and part*. The prisoner is obliged to deliver in the list of witnesses that he intends to call to his justification; and yet to prove *art and part* circumstances may be introduced not contained in the indictment; and if so, he is not permitted to call any new witnesses to his defence against such new charge. This might be consistent with the practice of the courts of Scotland, but it was contrary to all the principles of reason and justice. This was done in the case of Mr. Muir; it was proved that he had recommended Flower on the Constitution of France, and that he had uttered some expressions about reforming the abuses in the courts of law, although neither of these had been articulated in the indictment. He contended, that by *art and part* the indictment could merely mean *art and part* of the crimes libelled, and not of any other crimes; but the Lord Advocate said, that under the terms of *art and part* he could prove the sedition of his whole life, and draw into it every act of every kind. So he found had been the declaration on the trial. If so, he must aver that the gentleman had not had a trial that ought to subject him to the dreadful punishment passed upon him in the sentence. It was said, as an imputation upon the criminal law of England, that it was not necessary to name the precise day upon which a crime was committed, but the law required

that they should name and prove a day. But what was the practice in Scotland? They were not obliged to confine themselves to a day; nay, after taking, in the case of Mr. Muir, the period of months, for his conduct during all which he was to prepare his defence, they extended their evidence to a time even beyond this, said they had a right to take in his whole life, and he was denied the power of bringing evidence in his defence, because he had not previously given a list of witnesses to refute charges of which he had never heard. *I say, then,* said Mr. Adam, *that substantial justice has not been done to this gentleman; and if we have either the feelings or the hearts of men, we will not depart the House this night without an Address to the Throne for mercy.* The next great objection to the fairness of his trial was, that which related to his Jury. A Society was formed in Scotland, at Goldsmiths' Hall, resembling that at the Crown and Anchor, in consequence of the Institution of certain Societies called Friends of the People, of the publication of Paine's Rights of Man, &c.—Of the Friends of the People, he should content himself with saying, that though many respected friends of his were advocates for a Reform of the Representation of the people in Parliament, he had no opinion in common with them on the subject; and of Paine's Rights of Man he should only say, that he had been favoured with the reproach, in company with two Right Honourable Gentlemen over the way, for having disapproved of his doctrines. This Society at Goldsmiths' Hall had reprobated in severe terms Paine's book, and had excluded Mr. Muir from their society on account of his approving of that book. Gentlemen of this Society were the Jury, and an objection was made by Mr. Muir, a strong, a valid objection, that they were prejudiced men, had declared their prejudice, and had acted upon it. It was an objection common to the law of Scotland. There was a memorable instance in the trial of Lord Balmerino in the year 1631. He objected to Lord Marishal and Lord Dumfries, as having expressed themselves in his disfavour, and he put them to their oath—they took it. He made the same objection to Lord Blantyre, who refused to take the oath of his not having spoken to his disfavour, and he was rejected. Now, with a precedent so strictly in point, when they saw the Lord Justice Clerk repel the objection, because, forsooth, it would go far to exclude every man who has taken the oaths to Government—Good God, what must be the feelings of mankind on seeing so little regard paid to the decency of justice, and the fate of a fellow-creature! The men who had declared Mr. Muir to be seditious, and who had acted so far against him as to exclude him a society, were yet held to be fair jurors! The treatment in regard to the witnesses was equally hostile to all justice. John Russell, a witness for the defendant, was sentenced to three weeks of imprisonment, because at the very commencement of his examination, he had not been able to mention the names of the persons who had spoken to him on the subject of the trial. Mr. Adam shewed the legal distinction between the credibility of a witness and his competency. The Court had no right to withhold the evidence of a witness who was competent, on account of prevarication;

they ought to send it to the Jury, who are to judge of the credit that is due to it; but here they chose to deprive the prisoner of the evidence of his witness altogether. Another witness, William Muir, who from motives of conscience hesitated at taking an oath, was ordered to be imprisoned for ever! *It was monstrous! It was impossible to speak of such an act without horror!* Now after this sort of trial they were to consider the most material part of the whole proceeding, the discretion of the Court in the sentence which they passed on the prisoner. It was with the utmost reluctance that he came to agitate the conduct of a court of justice in that assembly; he felt the delicacy and the difficulty of the subject; and he wished that the House had granted, what in his opinion ought yet to be done, the right of appeal, so as to bring these questions forward in a different shape. He had avoided carefully throwing forth, till now, any doubt on the subject of their conduct, because he thought it right that the question should be examined to the bottom, and that before a doubt was hazarded, gentlemen should be made acquainted with all the facts upon which it arose. Now that he had examined the whole proceeding with the most anxious and attentive mind, he must gravely declare, that he did doubt and question the soundness of their discretion in the sentence which they had passed. What was the crime? Misdemeanour. What was the punishment? Transportation, the most aggravated and most afflicting that it could be. Let gentlemen consider what would have been the punishment passed in this country, on a similar offence? What would have even been the punishment of Mr. Paine himself? He might certainly say that it would have been no more than fine and imprisonment. Such would have been the punishment in England. But in Scotland they sentenced them to the most shocking species of transportation. Transportation—not to America, not to a cultivated society, to an easy master, and to kind treatment, but to an inhospitable desert at the extremity of the earth—condemned to live with ruffians, whom the gibbet only had spared, and under a system of despotism rendered necessary for the government of such a tribe! He illustrated the horrors of such a punishment by a beautiful passage from the philosophical Gibbon, and said, that though punishment ought not to be different for different classes of men, yet as the object of punishment was the prevention of crime, they surely ought to take care not to wound the feelings of mankind by exerting the utmost grasp of discretion to more than it could reach, or more than it could hold. The mind of man, shuddering at a disproportionate sentence, could feel no respect for the administration of justice so strained, and the hand of authority was therefore weakened and palsied by the act. In the exercise of sound discretion it was natural to think that the Court would have looked for the guides the most congenial to the feelings of the country. An article in the Union should have guided their discretion; the practice of England should have guided their discretion; unless it was meant that their authority was to be the stalking-horse for extending the same sort of severity to England. They should have remembered that as the two countries were bound together

by political and moral ties, that their allegiance was the same, their duties the same. They should have taken care that a punishment so outrageously different from that of the one country, should not have been suffered in the other. It was necessary even to the safety of England that this should be done. Even in the most violent case that England exhibited, that of Bishop Atterbury, our milder administration of justice thought only of an act of pains and penalties. But instead of this, they had had recourse to the despotism of the Romans, when the Romans had sunk under the tyranny of one man. *It was with horror that he saw them referring to the practice of the Roman law, under Nero and Domitian*, instead of the mild practice of the neighbouring country. One of the Judges had quoted the doctrine from the Roman law, and he took it for granted that the Latin quotation was correct, as the writer of the pamphlet would hardly have known it. He said that by the Roman law, "Actores seditionis et tumultus, populo concitato, pro qualitate dignitatis, aut in furcam tolluntur, aut bestiis objiciuntur aut in insulam deportantur."—"We have chosen," says the learned Judge, "the mildest of these punishments." Having gone through the case, Mr. Adam made a short, but warm and elegant conclusion, on the motives that had induced him to bring forward the subject. He had not done it from motives of professional interest; he had no personal knowledge of the sufferers; not from personal prejudice to the Judges, for he respected their characters; not from his love of Paine's principles, for he had frankly declared his opinion on them; but because he considered the distribution of criminal justice as the best defence of public liberty; he did it to save the nation from the disgrace and mischief of individual oppression, and because he believed that the perversion of criminal jurisprudence was likely to be the forerunner of anarchy on the one side, or of despotism on the other. *Feeling for the honour of the country, for the purity of criminal jurisprudence, for the safety of the British Constitution, he had thought it fit to bring before the House a proceeding which had wounded and tortured the feelings of considerate men;* and he proposed to correct the dangerous tendency of this proceeding by the most respectful means; it was a becoming privilege in the House to petition the Crown to exercise the most divine of its prerogatives, that of mercy, which blesses him that gives as well as him that asks, and by thus procuring seasonable redress to quiet the minds of the people, and to preserve sacred and inviolate the beauty of that Constitution which he hoped would descend unimpaired to the latest posterity. He concluded, therefore, with moving, That his Majesty would give directions that there be laid upon the table extracts from the book of a journal of the Supreme Court of Justiciary in Scotland of the trial of Thomas Muir, so far as related to the indictment, &c.

Mr. Fox seconded the motion.

The Lord Advocate of Scotland said, this was as serious a subject as ever came before that House for its discussion, for it involved the consideration of the proceedings of a Court of Justice not only the legality of them only, but also the discretion of the exercise of

their power also; supposing their proceedings to have been strictly legal, in the whole of which he must say, that not the Judges of the Court of Justiciary only were to blame, if blame there was on any part of the prosecution of these trials, but he must also bear his part of the censure, and must have his apology to make; and if the Learned Gentleman who opened the debate found it necessary to claim the indulgence of the House while he entered on the various topics of this subject, he must, in that respect, follow his example. In the part, he said, he had taken in these prosecutions, he followed the strict and fair, and to his mind the only mode that was pointed out by the Criminal Law of Scotland. He should not go upon the character of the Judges in the Court of Justiciary, further than to say they were men who had made the study of the law of their country, almost the only study of their lives, in which they had acquired the highest reputation. But if they were wrong in their decisions upon this subject, they were without excuse; for it had been argued before them over and over again, and they had persisted in the opinion which they originally gave. He admitted the justness of the general principles of the Learned Gentleman whom he was now about to answer, but differed almost totally from him in the application of these principles; and with respect to the exercise of the discretion of the Judges, as well as the legality of their proceedings, he trusted the House would agree with him, if he succeeded in what he should lay down, that the whole conduct of these trials was worthy of the approbation of the House. He must be permitted to say that the whole of the speech of the Learned Gentleman, as far as it respected the proceedings in question, was founded either on a complete misrepresentation, misconception, or ignorance of the law of Scotland, and of the practice of the Courts of Law there: and he trusted that the House would not permit a Court of Justice to be attacked in its character and dignity upon slight grounds; and he must add, that whatever some persons might say about assimilating the laws of Scotland to the laws of England, he was sure that much mischief had arisen from the ignorance and clamour with which the proceedings of the Courts of Scotland had been accused; these practices might, if not properly opposed, tend to bring the Judges, however high their character, and the law of Scotland, however wise and just, into discredit with their countrymen, a thing which he trusted that House would discountenance. The Learned Gentleman had misunderstood the nature of the law which was applied to the case of Messrs. Muir and Palmer; he had apprehended the law on leasing-making only had been applied to their case: that was not so. They were tried upon a charge distinct from that, which he would endeavour to explain to the House. From various circumstances, it became his duty, for about 17 or 18 months, to look particularly at the law of Scotland, and to look at that part of it which had slept in peace for a century, and until very lately no man thought it would have been necessary to call it forth in the manner it had been; nor would it, but for the acts of men who seemed to be endeavouring to see how far they could go with impunity. In this situation, it became his duty, and the duty of

those who acted with him, to look into all the old statutes upon these points, from the time of Robert III. down to the present time, and to look at every Act of Parliament in that period that applied to the question to be determined by these trials; they went over the whole history of the country, and the Act of 1503 was particularly under their consideration; and the result was, that they were decidedly of opinion that the fact proved against Mr. Muir was not such as came under the meaning of leasing-making, but was separate from that; for leasing-making was that of telling lies of the King, and so forth. But that the offence of this person was, that of exciting persons to acts of sedition against the King and the Constitution, and therefore he found he could not indict him for leasing-making. But even if Muir had been tried for leasing-making, he (the Lord Advocate) should make it as clear as the sun, that on a conviction of the charge of leasing-making, he would have been liable to have the punishment of transportation inflicted on him, as well as in that of which he was convicted; he therefore could have no view whatever in charging these men with the offence for which he indicted them, except that of acting according to the law of the country in which they committed the offence.

He then proceeded to examine the meaning of the word *banishment*, in which he differed from Mr. Adam in the definition. He did not think that it meant the slighter part of sending away from one place, and to the exclusion of another, which was called the severe part. He defined banishment by the law of Scotland to mean that of sending to any part the Court should think fit, and that *transportation* was only the means of carrying banishment into effect. This doctrine he maintained to be supported in the preamble of the Act of Parliament of 1503, so much relied upon by the Learned Gentleman. He maintained also that this principle was recognized by the different Acts of 1600, 1604, 1661, and all the Acts from that period down to the Act of 1670, under the authority of which several persons had been sentenced to be transported to the West Indies, and other parts beyond the seas, for leasing-making. He drew a conclusion from these premises, that the Judges who presided at these trials could not have acted otherwise than they did, could not have inflicted on those defendants slighter punishments, and answer to their country for the duty they owed to it, to their King, and to God. This was the case upon trials for *leasing-making*, in instances too numerous to mention in the course of this debate, for he could cite above fifty of them, some of a very old date indeed; for he believed that above two centuries ago, when Shetland and the Orknies belonged to the Crown of Denmark, persons were transported from Scotland thither, being at that time the only places to which transports from Scotland could be sent. Indeed, by the regular practice of the Courts of Law in Scotland, these points were arbitrary, and in the discussion of the Judges; and by Arbitrary Power, by the Law of Scotland, was meant a power to inflict what punishment the Judges should, in their discretion, think proper, short of death. Among many cases he alluded to, he mentioned one as a very

striking case. It was the case of David Bailey, who was tried on the 24th of February, 1704. This man was accused of *leasing-making*—of saying that the Duke of Hamilton and the Duke of Queensbery had supported the Pretender. He was convicted of this charge. What was the sentence pronounced upon him? They declared him to be infamous; they banished him forth of Scotland for ever; ordered that he be transported to the West Indies, to be imprisoned till he was transported, and to be set upon the pillory at eleven o'clock in the forenoon, on such a day as the Court should appoint. His Lordship said he was open to conviction, and he was sure the Judges of the Court of Justiciary were; but he wished to know whether any case could be stronger than this, or how it could be explained away, for this was only eight months after the Act of 1703, on which so much stress had been laid, and justly laid, for that was an important Act. This was after the declaration of grievances, and the claim of rights, and the rights of Queen Anne. Would the Privy Council who pronounced this sentence, have dared to pronounce it, and to have banished this man for ever at such a time, if that had not been a legal act? On inquiry, he found these Privy Counsel were the first men at that time in Scotland, five of whom were Judges. But this was not all, for he maintained, that even the learned character to whom the Learned Gentleman had alluded, and to whom mankind were so much indebted (Sir George Mackenzie), had defined sedition in his Treatise on the Laws of Scotland, and had warranted the conclusion of the Court of Justiciary and Circuit Courts on the present trials. That great lawyer had considered sedition as a common law offence; indeed, sedition was a crime well known to the law of Scotland.

The statement of the Learned Gentleman was certainly correct as to the pleadings of the Court of Scotland being in the form of a syllogism. They certainly had a major and a minor proposition, in the course of which the prisoner was to know in general what was to be alleged against him, but the Learned Gentleman misunderstood the Law of Scotland entirely, if he thought that the Scotch Lawyers were to plead as formally, as they do in England. That was never the practice of the Law of Scotland. This was what some English Lawyers had called a shameful latitude, but so the Law of Scotland was. It was enough by that Law, if a charge was made out in general terms, and the time, by the common practice, in which the prosecutor insisted on any act of the defendant, was the period of three months, within the time of which the prisoner had notice. In either one or other of these days, the prosecutor must give evidence of seditious speeches or writings, but either of them would do upon a charge of sedition generally laid against such prisoner. The prosecutor was not bound to prove what he stated specifically; it was enough to prove what the nature of the charge was generally to entitle him to give evidence of speech, words, or letters. This doctrine applied to the case of the book, called the "Flower of the Constitution," in the defendant's pocket. An objection was taken to this—he was ready to have argued the thing, but before the Court could give their judg-

ment, he gave up the point *ex gracia*, because he thought it not worth while to dispute it.

As to the objection taken to the Jurymen, because they were members of the Goldsmiths' Hall Association, if that was to be allowed as a disqualification, they would object to the first characters in the country. They might as well say, they would not be tried by any friend to the Constitution, or by any but those who thought as they did. This must be the case if this objection was allowed, for if we searched the whole country over, there would be found but two classes of persons—those who wished to support the Constitution, and those who wished to destroy it, and to introduce all the confusion and the anarchy of France. There was no middling class to be found.

He then took notice of the case, as it respected the witness Russel, and maintained that the answers he gave amounted to prevarication, and therefore he was committed. He maintained that the pannel lost nothing for want of the testimony of this witness, for that he only came to prove what twelve other witnesses had sworn on the part of the defendant,—that he frequently desired the populace to behave peaceably, and so on: these witnesses he had no doubt have had a conference at Glasgow upon this subject; and that was the reason they agreed so well on this part of the story.

As to the soundness or the discretion of the Court of Justiciary, he found himself bound to defend it under all the circumstances with which it was attended. Upon this subject he entered much at length, and observed that he had heard much of the superiority of the law of England over the law of Scotland; but for his part, he thought that in this particular case the law of Scotland was superior to the law of England, and much better adapted to suppress sedition. He maintained also, that transportation was the most prudent disposal that could be made of persons, who had been guilty of such atrocious offences, for the persons convicted, if they had been fined, would have had their fines paid by others,—and as to imprisonment, they would have borne it with triumph; and would, as others do, have laughed at their prosecutor; and might sow the seeds of sedition among poor, illiterate, and heedless people—what might be the effect of the people of England having among them such men as Skirving, Margarott, and Gerald?

Mr. THOMPSON called to order, and thought it highly improper to bring forward the name of Mr. Gerald, who was not yet tried.

The LORD ADVOCATE made an apology, and then entered upon the general subject of the trials, and maintained their legality and the soundness of the discretion of the Judges, who, he said, had done nothing more than the law commanded them to do.

Mr. SHERIDAN took notice of all the arguments of the Lord Advocate, and maintained there was a fallacy in the whole tenor of his speech, for he confounded two things essentially distinct, that of *leasing-making* and *sedition*. All the cases he had brought forward applied to *leasing-making* only; and the question did not involve that consideration, but related merely to sedition, upon which not a single

case was to be found. He ridiculed the assertion of lawyers from Scotland telling the House they were not qualified to judge on a point of common sense, because they were not Scotch lawyers. The question here was a question of common sense, arising out of the history of the country. He reprobated in the most severe manner the observation of the Lord Advocate, that there was no middle class of people in Scotland, between those who wished to destroy the Constitution and introduce the horrors of anarchy, and those who applauded the proceedings of the Court of Justiciary. The assertion he hoped and believed to be as false, with regard to the people of Scotland, as he knew it to be false of the great body of the people of England; he knew that in England there was a class between Republicans and Levellers, and Associators and Alarmists, and much more honourable in their views than either, and men upon whom the safety of this Kingdom might depend, and to whom every honest man might look up to with confidence—men who had too much spirit to crouch to power, and too much candour and integrity to stoop to mean artifice, to gain the momentary applause of the unthinking part of the community. He expressed his indignation at the idea of the Learned Lord preferring the criminal law of Scotland to that of England, and said that such assertions should never be suffered to pass unreprobated, lest contempt might by some be construed into acquiescence, and lest some Minister might be bold enough to make an experiment of changing the criminal law of England for that of Scotland. He took notice of the conduct of the Court, with regard to the witness Russell, offered on the part of Mr. Muir, and maintained that both the Lord Advocate and the Court had acted illegally upon that subject; that their conduct would not have been agreeable to any principle of law, in any civilized society;—that witness had only said, that he did not recollect what no person in Court could prove to be false. He applied many pointed observations on the refusal of the Court of Justiciary to allow the objection of Mr. Muir to the Jury, as having prejudiced his cause in the association of the Goldsmiths' Hall Company. This, he said, confounded two things essentially at variance with one another in the administration of justice in every Court where justice could be known—that of the accuser being a Judge, which was the case on the trial of Mr. Muir. He ridiculed the effect of the researches of the Lord Advocate, who had studied the law of Scotland for eighteen months, and had only brought forward a law which had slept for a century, which, when he brought it, turned out to be only a law upon *leasing-making*, whereas the subject to which he applied it was sedition. He observed that it was rather remarkable, that the Noble and Learned Lord could not have found in the History of Scotland any law for sedition, in the course of a century, although within that time it had produced two rebellions. It was extraordinary, he said, that the Noble Lord should never by accident have stumbled on the case of a Mr. DUNDAS (he thought his name was), of *Arneston*, who was accused of distributing medals, which a wicked woman, called the Duchess of GORDON, had given

to him: on these medals were the head of the Pretender, and something very seditious on the other side—and of making speeches recommending the cause of the Pretender. It was extraordinary that this circumstance had escaped the historical vigilance of the learned Lord. He took notice also of the charge against Mr. Muir for distributing books, the works of others, and of transporting him for fourteen years for it, as a thing perfectly new. Had the Learned Lord had never heard of such a crime as calling on the people to ask for a Parliamentary Reform? Perhaps the Noble Lord had never heard of such a thing as a resolution signed William Pitt, Duke of Richmond, and others, calling on the people to do that very thing. [Here he read the resolution of the Thatched-house Tavern, entered into by Mr. Pitt and his party in 1781.] Perhaps the Noble Lord had not known any thing of the late publications of Mr. Burke against Popular Rights, which however agreed pretty well with the speeches of the Noble Lord at these Trials, for every sentence and almost every word seemed as if borrowed from that admired performance. But the public would see through all this; they would see that there was something so implacable, so rancorous in the character of an apostate, that he can never forgive others for adopting what he has found convenient to abandon: hence all the persecutions against all those who dare to follow the plan of a Parliamentary Reform. He then took notice of the case of Bailey, and maintained that the Privy Council exceeded their power to a shameful degree in that case. He maintained that the Lord Advocate had misconstrued the whole of the opinion of Sir George Mackenzie on the subject of sedition; and he observed that the question now for the House to ask itself, was whether they would, in order to clear a point that was at least extremely doubtful, agree to the motion? He warned the House against the public danger of laying down a precedent which would go to the length of telling the people of this kingdom that the House of Commons will never institute an inquiry into the conduct of justice upon any thing short of illegality.

Mr. WHITBREAD informed the House that he had the honour (for an honour in the true sense of the word he deemed it,) to be acquainted with Mr. Palmer, to whom he paid the most handsome compliments for understanding and virtue. He then took notice of the subject of debate before the House, and declared he thought these severe sentences were dangerous to the public welfare and tranquillity of the realm. These were points on which posterity would impartially judge.—Every day Ministers were pushing points too far: a day would arrive when these things should be seen impartially.

Mr. WYNDHAM defended the legality of the trials, on the precedents which appeared to him to have been quoted. He was of opinion that the Law of England might be altered and assimilated to the Law of Scotland, if it was found adequate to the purposes of suppressing sedition.

Mr. FOX said, he considered the question to be of a nature so alarmingly important, that he could not sit silent after hearing the

arguments that had been brought forward:—there were some circumstances collaterally introduced which he was obliged to notice before he went to the legality of the conduct of the proceedings that had taken place in Scotland; and he could not help observing with particular surprise and indignation, the manner in which the Learned Lord expressed a wish that the law of Scotland, as he expounded it, should be introduced into England, instead of those wise and salutary laws under which so much had been secured to this country; and when the Learned Lord roundly asserted that he was convinced the Scotch criminal law was preferable to the English law, and that he could wish to see them assimilated, he owned he was struck with the violence and boldness of such doctrines. Were they extended to the full length that the Learned Lord, and a Right Honourable Friend of his seemed to wish, he saw no security that he, his Honourable Friends, or any other person had, that they might not be sent to Botany Bay, as it placed them completely in the power, and at the discretion of the executive government. In the present case he thought the Scotch Judges had exercised their discretion to a degree of impropriety that was not justifiable, or if it was justifiable by any law, it was full time, from the enormity of the case, that such law should be repealed, and the people of Scotland put upon the same footing with those in England. He thought that House had shewn a degree of false delicacy about calling for the record on this case, and reminded them of the petitions in the reign of Charles I. which, though they came some of them from people not of unexceptionable character, were properly attended to by Parliament. With regard to the act of 1703, it certainly was a limiting act, and under the word banishment, never could mean transportation; and being a mitigating act ought to be construed mildly; he then came to the act 1672, which specifies when transportation is the meaning, that some of those convicted under that law, were to be transported to the West-Indies, and in other cases forth of the realm, which is no more than banishment from their country, without any direction where they are to be sent. He considered the negative evidence given by his Honourable Friend who made the motion, as entitled to much weight, as nothing had been said on the other side. His Honourable Friend had proved that there was no one instance, except for capital crimes, of any person being transported after sentence of banishment had passed, and no instance of any trial for sedition in the history of Scotland to be found. In one act, indeed, there were words which went farther on the subject of punishments by banishment to places specified, and added, "or otherwise;" but certainly no man would say, that this should be acted upon by construing the law with a latitude from those words to the injury of the subject: considering therefore the principle of this law, and of all mitigating laws, he was clearly of opinion that the Scotch Judges had either misunderstood or misinterpreted the law. As to what happened in 1704, and which had been stated as a precedent, it was only necessary to say, that those proceedings were ruled by the Privy Council, at the time the most reprobated of all the tribunals

that could possibly be mentioned. Indeed, in this opinion he had the high authority of a great lawyer in the other House, who had said from the Woolsack last year, when the precedent of the Appeal to the Privy Council, 1704, was stated, "You must not mention that; you cannot argue from it; it is no precedent." The Learned Lord had taken pains to explain what *leasing-making* was. but he had likewise been obliged to own, that there were other crimes which had been punished as sedition, that did not precisely come within the description of telling falsehoods between the King and the people; such as the case of his ancestor and others, in the reign of George I. such as drinking the Pretender's health, refusing to ring the bells at Dundee on the King's accession, and others which had not been followed up by transportation; and would any man compare the criminality of those cases, to the criminality of the present case, which was merely delivering opinions favourable to a Parliamentary Reform? He treated with happy irony the argument of the Learned Lord, that he was so much at a loss to find out the proper way of punishing sedition in Scotland, that he was obliged to look into laws that had been dormant for a century; but if there was no sedition in Scotland for a century, was there none in England that he could look to? That there should be none in Scotland was the more extraordinary, as within that century there had been two open rebellions. By the Learned Lord's argument, sedition was a good thing, for they had it in England, and had no rebellion there;—they had none in Scotland, and there there were two rebellions. He treated Sir George M'Kenzie as the apologist of all the tyranny and oppression that disgraced the latter part of the reign of the Stuarts, and as such considered it humiliating to quote him as an authority; as far as it went, however, it would be found against the Learned Lord. He came next to discuss the manner in which the evidence had been conducted at Mr. Muir's trial, the bare statement of which, he said, must make the blood run cold of every one who heard it. He argued, in a masterly manner, the impropriety of bringing forward Ann Fisher, Mr. Muir's domestic servant, to prove that he at some time or other had abused the proceedings of the Courts of Scotland. If such unquestionable proceedings were encouraged, where was the man who could say his character, his property, or his life, was in safety? His Right Hon. Friend and he, with many others, who were united in their sentiments against the American war, might have been sent long ago to Botany Bay. In short, all were liable to be accused of sedition who opposed administration at the time, and the whole country was at the disposal of the Executive Government. *The whole of the proceedings on this trial, he maintained, were disgusting and monstrous to every lover of justice and humanity.* He saw a great similarity between that proceeding and some of the detestable proceedings as to the crime: the Learned Lord's sedition would there be termed incivism; and as to the punishment to a man of sensibility, there was little difference between Botany Bay and the guillotine. The Learned Lord having no statute law for sedition, had recourse to common law; but where

can it be found? The common law could only exist in three ways—on practice, on authority, or on the general reasoning of eternal justice; but none of those could answer the purpose of the Learned Lord. He contended very ably, that the Court had been equally wrong in admitting improper evidence for the prosecution, and refusing competent evidence for the defendant—alluding to Russell's. He laid it down to be the right of the Jury to judge of the credibility, the Court could only judge of the competency. He then entered into the question of challenging such of the Jury as had associated and offered a reward to convict Mr. Muir, as well as refusing to admit him of their society. This challenge in England would have been admitted, and he knew no reason why it should not be so in Scotland, because by their conduct they certainly had prejudged Mr. Muir. He noticed the want of decorum that prevailed on the Bench, and thought it the grossest levity and nonsense to hear the punishment stated by some of the Judges, to be the mildest and most lenient that could be inflicted. The Learned Lord would have acted fairer, if he intended to alter the laws of this country, had he gone to the bottom of the plan. He was particularly severe upon the manner in which several of the Judges gave their opinions. If they were serious, they were as absurd as extraordinary; and if in jest, he would only ask if that was a place or a time for jests and ribaldry? One among them had noticed with much indecency, the applause that followed Mr. Muir's speech; and another, in a Latin quotation, pointed put from the Roman law, that the only punishment for sedition in Scotland was the gallows, delivering the delinquent to wild beasts, or transportation; and concluded, that they in their wisdom had made choice of "the mildest." If there was no law, or no example from their ancestors to direct them, might they not have looked for precedents in this country? Here he thought himself bound to pay a just tribute of praise to a Right Honourable Gentleman opposite (the Attorney-General). In his official capacity, he had to prosecute to conviction: the sentence was fine and imprisonment; but in the execution of that sentence, the Gentleman, Mr. Winterbotham, a clergyman, who had been convicted of preaching two seditious sermons, found himself thrown into jail, amongst felons who had been guilty of every sort of crime; but no sooner did this come to the Attorney-General's knowledge, then he, with sentiments of honour, justice, and humanity, said, "God forbid that a person of the description mentioned, should, for a single day, be confined in such society;" and took steps, in consequence, that would do him immortal honour. Mr. Fox went into every part of the subject, and concluded a brilliant and animated speech, of which the above is merely a feeble outline, by declaring that he gave the motion his warmest support.

Mr. PITT contended for the legality of the whole proceedings in the fullest extent; that the act of 1703, by the word 'banishment,' includes transportation; and was only so far a mitigating act, as it took away capital punishment from a crime that was capital, but left full power, and the exercise of discretion in the application of arbitrary punishment, according to the variety of the circumstances as they

occurred. He said that in all, or most of the sentences passed from 1703 to 1754, transportation was mentioned. He granted that much might justly be said against the Privy Council in 1704, but that was no reason why the whole of their proceedings should be branded with so much infamy. He approved of the manner in which the trial had been conducted, and thought the Lord Advocate right in preferring to libel sedition, instead of leasing-making. He went over what he conceived to be the distinctions between leasing-making, sedition, and treason. He contended that the trial was fair, legal, and could not have been conducted in any other way. He complimented the Judges and the Lord Advocate, and thought if it was to be lamented that the punishment was severe upon men of rank and education, it ought to be remembered that their situation was rather an aggravation of their guilt than otherwise. He concluded by giving his negative to the motion.

Mr. ADAM made a very able and pointed reply, in which he again expressed his astonishment that Ministers should advise the execution of such sentences against men whose offence might perhaps be traced to the doctrines formerly inculcated by some of those who now held distinguished situations in the Cabinet.

Mr. PITT rose again to say that he saw nothing of promoting a Parliamentary Reform charged in the indictment against Mr. Muir, but circulating Paine's book, and inculcating the pernicious doctrines it contained.

Mr. GREY affirmed that if the Right Hon. Gentleman had condescended to read the indictment and the trial, he could not have been ignorant that whatever words might be introduced, the substantial part of the charge in both cases was promoting Parliamentary Reform, and that, too, on principles much less exceptionable than those held by persons with whom the Right Hon. Gentleman himself had acted in concert. Mr. Grey gave the motion of his Hon. Friend Mr. Adam his unqualified support.

At a quarter past three o'clock in the morning, and after a debate of ten hours, the House divided.

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| For the Motion, . . . . . | 32 |
| Against it, . . . . . | 171 |
| Majority against the Motion, . . . | 139 |

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(*From the Morning Chronicle.*)

The speech of Mr. ADAM on the Question of the late Judicial Proceedings in Scotland, was, in point of arrangement, reasoning, and language, one of the ablest discourses we ever heard in Parliament: our account is a very feeble outline, and can hardly give an idea of the impression which he made on the audience part of the House.—His reply was spirited and argumentative.

*List of the Minority on the Motion of Mr. Adam.*

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| Right Hon. C. J. Fox | Colonel Tarleton |
| S. Whitbread, Esq. | M. A. Taylor, Esq. |
| Major Maitland | Philip Francis, Esq. |
| Lord John Townsend | James Walwyn, Esq. |
| Lord William Russell | William Plumer, Esq. |
| Hon. St. A. St. John | William Smith, Esq. |
| Lord Robert Spencer | James Hare, Esq. |
| General Fitzpatrick | George Byng, Esq. |
| Hon. T. Erskine | Earl Wycombe |
| William Adam, Esq. | Hon. Edward Bouverie |
| Dudley North, Esq. | Hon. W. H. Bouverie |
| Thomas Thompson, Esq. | Sir Edward Winnington, Bart. |
| Henry Howard, Esq. | R. P. Knight, Esq. |
| Benjamin Vaughan, Esq. | John Harrison, Esq. |
| Colonel Macleod | John Courtenay, Esq. |

TELLERS.

R. B. Sheridan, Esq. Charles Grey, Esq.

Colonel M'Leod was the only Scotch Member who voted with Mr. Adam for the motion!

We regret we have not been able to lay our hands on the names of the *Majority*, as they deserved to be published.

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## No. XX.

*Tribute to Scotland, and to* Mr. MUIR, *by* CURRAN, *taken from his eloquent Speech in Defence of* Mr. HAMILTON ROWAN.—*Jan.* 29, 1794.

GENTLEMEN,—I am glad that this question has not been brought forward earlier; I rejoice for the sake of the court, of the jury, and of the public repose, that this question has not been brought forward till now. In Great Britain, analagous circumstances have taken place. At the commencement of that unfortunate war, which has deluged all Europe with blood, the spirit of the English people was tremblingly alive to the terror of French principles; at that moment of general paroxysm, to accuse was to convict. The danger loomed larger to the public eye, from the misty region through which it was surveyed. We measure inaccessible heights by the shadows which they project, where the lowness and the distance of the light form the length of the shade.

There is a sort of aspiring and adventurous credulity, which disdains assenting to obvious truths, and delights in catching at the improbability of circumstances, as its best ground of faith. To what other cause, Gentlemen, can you ascribe, that in the wise, the reflecting, and the philosophic nation of Great Britain, a printer has been gravely found guilty of a libel, for publishing those resolutions to which the present minister of that kingdom had actually subscribed his name? *To what other cause can you ascribe, what in my mind is still more astonishing, in such a country as Scotland—a nation cast*

*in the happy medium between the spiritless acquiescence of submissive poverty, and the sturdy credulity of pampered wealth; cool and ardent; adventurous and persevering; winging her eagle flight against the blaze of every science, with an eye that never winks, and a wing that never tires; crowned as she is with the spoils of every art, and decked with the wreath of every muse, from the deep and scrutinizing researches of her Hume, to the sweet and simple, but not less pathetic and sublime morality of her Burns—how, from the bosom of a country like that, genius, and character, and talents, should be banished to a distant barbarous soil;* condemned to pine under the horrid communion of vulgar vice and baseborn profligacy, for twice the period that ordinary calculation gives to the continuance of human life?*

But I will not press an idea that is painful to me, and I am sure must be painful to you.

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## No. XXI.

*Letter from* Mr. Muir *to a friend at Cambridge, written on the eve of his leaving England.*

My dear Friend,—I received yours at Edinburgh with the sincerest pleasure; your sentiments and mine are equally accordant, the great lesson we have to learn in this world, is submission and resignation to the will of God. This lesson strikes upon the heart, not by the force of cold and abstracted precept, but by the example of Him, who was the object of all sufferings, and the pattern of all perfection. Much need have I to be taught in his school. Hurled, as it were in a moment, from some of the most polished societies in Edinburgh and London, into one of the hulks upon the Thames, where every mouth is opened to blaspheme God, and every hand stretched out to injure a neighbour, I cannot divest myself of the feelings of nature; I cannot but lament my situation; and were it not for the hope of immortality, founded upon our common Christianity, alas! I might accuse the Father of all Justice and of all Mercy with severity. But blessed be God, every thing in the great system of nature, every thing in the little system of individual man, corresponds with the great dispensations of the gospel, and demonstrates its efficacy.

Much consolation does the reflection now afford me, that in prosperity I always regarded this revelation of heaven with the most profound reverence.

In solitary exile there is dignity, there is a conscious pride, which, even independent of philosophy, may support the mind, but I question much, if any of the illustrious of ancient ages, could have supported an exile similar to mine, surrounded by the veriest outcasts of society, without the aid of religion and of the example of Jesus.

I have been separated from Mr. Palmer, he is in one hulk, I am in a different one. The separation is an act of unnecessary cruelty.

* Mr. Muir was introduced to Curran when in Ireland, and became personally acquainted with him.

My state of health is poorly. The seeds of a consumption, I apprehend, are planted in my breast. I suffer no acute pain, but daily experience a gradual decay.

Of every thing relating to my future destination, I am utterly ignorant.

Honour me by your correspondence, I am sure it will ameliorate my heart.

Farewell! my truly worthy and respectable friend.

THOMAS MUIR.

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## NOTE.

SINCE the preceding pages have come from the Press—an unexpected and most extraordinary document has been put into our hands. It is an original letter written by Mr. SKIRVING to the Governor of New South Wales, and evidently revised by Mr. Muir, detailing an account of their voyage from England to Sydney.—And we have been struck with horror to find that a cold-blooded—cool—and premeditated plan seems to have been formed for murdering Muir and his companions on the passage, under the false—the hatched pretence of Mutiny!

Poor Muir was brutally knocked down by a Soldier, but Providence again interfered to save his life!—We shall probe this matter to the bottom. The People of England shall hear of it. The letter (holograph of Skirving) is by far too long to enable us—consistently with our previous arrangements, to print it, as an additional Appendix. But we are perfectly ready and willing to exhibit the original to any person who may call upon us wishing to see it.

28, PORTLAND STREET, LAURIESTON,
*Glasgow*, 13*th April*, 1831.

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ERRATA.

Page 6, for "*Society*," read "*Societies*."
*Note*, p. 8, for "*have*," read "*has*."
Page 18, line 22 from top, for "*is*," read "*was*."
Page 20, fourth line from top, for "*And*," read "*Nay*."

THE END.

Edward Khull, Printer, Glasgow.

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